code of federal regulations

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National Defense

Item #572-C

32

COMPLETED

PARTS 1 TO 39, VOLUME II
[Contains DAR Sections VII–XV]
Revised as of August 1, 1981

022-003-94626-8

THE NATIONAL ARCHIVES OF THE UNITED STATES
1934

code of federal regulations

National Defense

32

PARTS 1 TO 39,
VOLUME II

[Contains DAR Sections VII–XV]

Revised as of August 1, 1981

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
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The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, August 1, 1981), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised semiannually as of January 1 and July 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

August 1, 1981.

THIS TITLE

Title 32—NATIONAL DEFENSE is composed of eight volumes. The parts in these volumes are arranged in the following order: Parts 1 to 39 (Volumes I, II, and III), Parts 40 to 399, Parts 400 to 699, Parts 700 to 799, Parts 800 to 999 and Part 1000 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1981, (August 1, 1981 for Parts 1 to 39).

DAR REGULATIONS

The Defense Acquisition Regulations (DAR), formerly known as ASPR, comprise the first 3 volumes of Title 32 organized as follows:

(1) Title 32, Parts 1 to 39, Volume I (containing DAR sections I-VI).

(2) Title 32, Parts 1 to 39, Volume II (containing DAR sections VII-XV).

(3) Title 32, Parts 1 to 39, Volume III (containing DAR sections XVI-XXVI, and Appendices A through R).

DAR NUMBERING AND TERMINOLOGY

The DAR, as updated in these CFR volumes, contains the material from the July 1976, DAR loose leaf edition, as amended by Defense Procurement Circulars 76-1 through 76-14, and Defense Acquisition Circulars 76-15 through 76-27. The CFR volumes have been reproduced photographically from the DAR edition, and, thus, are identical in content. As such these CFR volumes contain the DAR numbering system which differs substantially from standard CFR numbering.

The terminology used in most CFR volumes is different from that which is used in these editions of the DAR. The following table shows the standard CFR terms with their DAR equivalents.

CODIFICATION SYSTEMS

CFR	DAR
Subchapter A	Regulation
Part	Section
Subpart	Paragraph
Section	Part

The terms above represent levels or rankings of text. All of the DAR are contained in Subchapter A of Chapter I of Title 32, which is referred to as the "Regulation" in DAR terminology. This Regulation is divided into "Sections". Each section is divided into "parts" and each part is divided into "paragraphs". In the CFR system, the CFR section is the basic unit of text. Consequently, in the DAR the paragraph is equivalent to the CFR section as the basic unit of text.

Within the text of a DAR paragraph, there is not a uniform numbering system for the subdivision of text as there is for text within CFR "sections". However, most DAR paragraphs are consistent within themselves. Users are advised, therefore, to be alert for codification variations in DAR numbering within DAR paragraphs.

A typical reference to DAR material might look like this: "* * * appearing at 3-201.2(a) of this Regulation * * *". In locating this material, you would first remember that the phrase "of this Regulation" means "of this Subchapter A". The first two digits in DAR numbering refer to the section and its part. Therefore, this referenced material will be found in Section III ("3"), Part 2. The next two numbers, "01", refer to a specific DAR paragraph. Often in the DAR, paragraphs are followed by a series of subparagraphs. These subparagraphs further explain the ideas established by the paragraph. The relationship between the subparagraphs and their paragraph is connoted by giving the subparagraphs the number of their paragraph followed by a period and another number. For example, paragraph 3-201, has three subparagraphs. These are numbered 3-201.1, 3-201.2, and 3-201.3. Therefore, the material at 3-201.2(a), is located in one of these subparagraphs, namely 3-201.2. The letter "(a)" which follows all the numbers, refers to a specific unit of text within the subparagraph 3-201.2.

For purposes of numbering, a DAR Appendix is the equivalent of a DAR section. Thus, references to material located in Appendices A through R, Title 32, Parts 1-39, Volume III, are handled in the same manner as DAR sections, except that in place of a first digit, a letter will appear. For example, material at "A-201.2(a)", would be found using the steps discussed above for 3-201.2(a), except that the "section" digit has been replaced by an "A" for Appendix A. For more information regarding the arrangement, numbering, citation, and cross referencing of the DAR, see Section I, Part 1, paragraph 03 (or "1-103") of the DAR itself.

PAGINATION

Each of the three volumes is individually paginated. The page number is centered at the bottom of each page.

The following information should be of use to those users who are familiar with DAR replacement page technique for updating the regulations. The upper left corner (for even pages) and the upper right corner (for odd pages) contains pagination information for each section of the DAR. These page identifiers begin numbering anew with each section. A typical reference might be "3:178." The number to the left of the colon refers to the DAR section. In this case the "3" refers to DAR section III. The number to the right of the colon refers to the page of that DAR section. Thus, the reference 3:178 indicates that the user has the 178th page of DAR section III. Amendments to the July 1976 edition are reflected by a DPC or DAC reference at the top of the page and a vertical line in the side margin of the page.

TABLE OF DAR SECTIONS AND PARTS

Each volume has a table of contents listing all the DAR sections and parts contained in the three volumes. This table of DAR Sections and Parts begins on page x of each volume.

Each of the three volumes also has a table of contents listing the DAR sections (or Appendices) contained in that particular volume and the page where each section (or Appendix) begins. This table appears on page 3 of each volume.

APPENDICES

Users of the DAR will note that former 32 CFR Part 30 was broken down into Appendices A through R. Appendices F, G, J, L, N, O, P, and Q had no previous equivalent in earlier CFR editions. Consistent with its policies regarding publication of tabulated blank forms, the Office of the Federal Register is not reproducing the forms published in Appendix F—Illustrations of Standard and Department of Defense Forms. This edition of Appendix F will not contain the text of any forms. Instead, Appendix F will consist of a list of forms. The Office of the Federal Register is also omitting Appendices N and O. Appendix N is a list of activity address numbers and Appendix O reprints the Cost Accounting Standards Board regulations which are codified in 4 CFR Chapter III.

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An index to the DAR is located at the end of Title 32, Parts 1-39, Volume III. DPCs 76-1 through 76-14 and DACs 76-15 through 76-27 have not been indexed. Entries are by subject matter and references are to DAR section and paragraph.

For this volume, Dean L. Smith was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Reference to ASPR Manuals and Supplements:
ASPR Manual for Contract Pricing (*ASPM No. 1*) (15 Sep 75)
ASPR Small Purchase Manual (*ASPM No. 2*) (31 Mar 76)

ASPR Supplement No. 1 — Guide for Conducting Contractor Procurement System Review (CSPR) (*ASPS No. 1*) (31 Mar 77)
ASPR Supplement No. 2 — Contract File Maintenance, Closeout, and Disposition (*ASPS No. 2*) (1 Apr 70)
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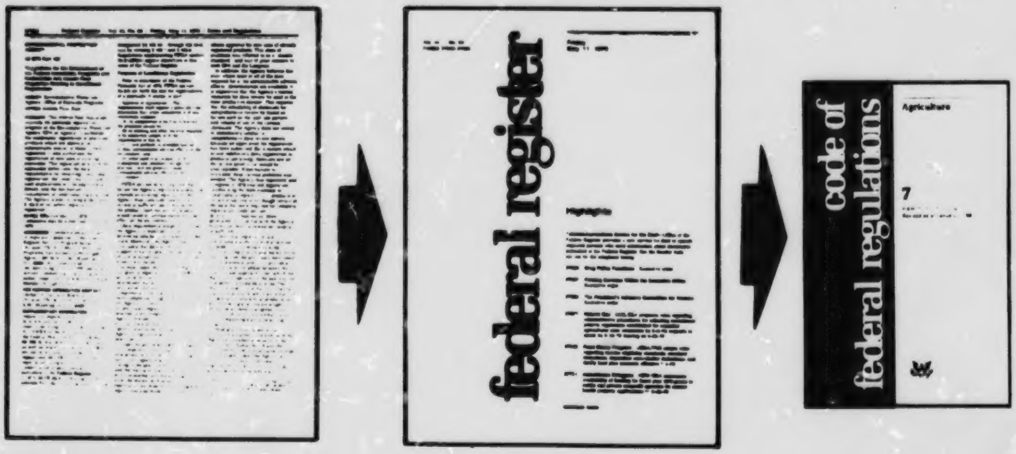

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Title 32—National Defense

Parts 1 to 39, Volume II
(This volume contains DAR Sections VII-XV)

SUBTITLE A—Department of Defense (Continued:)

Section

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EDITORIAL NOTE: The DAR Regulations do not correspond to the CFR numbering system. For a detailed explanation on the DAR and CFR see page vii of this CFR volume.

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SECTION VII

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-000 Scope of Section. This Section sets forth uniform contract clauses for use in connection with the procurement of supplies and services.

7-001 Incorporation by Reference.

(a) Except as may be otherwise indicated with respect to individual clauses, provisions, or groups thereof, all clauses and provisions of Section VII are susceptible to incorporation by reference in solicitations and contracts in accordance with the following criteria.

(1) A provision substantially as follows shall be employed to effect incorporation by reference:

> The following Armed Services Procurement Regulation clauses and provisions, the full text of which will be made available upon request, are incorporated herein by reference with the same force and effect as if set forth in full text: (each clause and provision to be incorporated by reference shall then be identified by specific ASPR paragraph, clause or provision title, and date).

(2) The Chief of a Purchasing Office may further restrict incorporation by reference for specified contracts or classes of contracts.

(3) So long as the verbatim text satisfies all solicitation or contract requirements, incorporation by reference is authorized, notwithstanding that the clause or provision (i) is identified for alternate or optional use or as a sample, or (ii) requires insertion of an appropriate schedule provision by the Government for its completion.

(4) A clause or provision shall not be incorporated by reference if it (i) is not susceptible to precise identification as required by (1) above, (ii) requires completion by the offeror or contractor, or (iii) is otherwise impracticable for application of the technique.

(b) Clauses and provisions published in Departmental procurement instructions and Departmental ASPR implementations shall not be incorporated by reference.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 1—Fixed-Price Supply Contracts

7-100 Scope of Part. This part sets forth uniform contract clauses for use in fixed-price supply contracts as defined in 7-101.

7-101 Applicability. As used throughout this Part, the term "*fixed-price supply contract*" shall mean any contract (i) entered into either by formal advertising or by negotiation other than (A) purchase orders (but see 3-608.2(b)), (B) letter contracts, (C) notices of award, (D) general contracts for communication services and facilities and (E) supplemental agreements to contracts or purchase orders, which do not effect new procurement; (ii) at a fixed price (with or without provision for price redetermination, economic price adjustment, or other form of price revision as covered in 3-404; and (iii) for supplies other than (A) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property, (B) experimental, developmental, or research work, or (C) facilities to be provided by the Government under a facilities contract as defined in Section XIII. However, there are supply contracts in which performance involves cost-reimbursement, construction, research and development, or other special factors. In such cases, see the particular Parts containing additional applicable clauses.

7-102 Contracts Subject in Part to Incentive Price Revision. When a contract is partly a firm fixed-price contract and partly a fixed-price incentive contract, the clauses required for both types of contracts shall be included. When any provision is applicable only to firm fixed-price items, or only to items subject to incentive price revision, such provision shall be so labeled.

7-103 Required Clauses. The following clauses shall be inserted in all fixed-price supply contracts.

7-103.1 *Definitions.*

DEFINITIONS (1979 MAR)

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Head of the Agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency: and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the Head of the Agency or the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontract" includes but is not limited to purchase orders, changes and/or modifications thereto.

(End of Clause)

Additional definitions may be included *provided* they are not inconsistent with the foregoing clause or the provisions of this Regulation.

7-103.2 *Changes.*

CHANGES (1958 JAN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith: (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change, *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29) and the audit clause required by 7-104.41.

7-103.3 *Extras.*

EXTRAS (1949 JUL)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

7-103.4 *Variation in Quantity.*

(a) Insert the following clause.

VARIATION IN QUANTITY (1949 JUL)

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

(End of clause)

(b) In accordance with 1-325, insert the following clause.

EXTENT OF QUANTITY VARIATION (1965 APR)

The permissible variation under the clause of the General Provisions entitled "Variation in Quantity" shall be limited to:

Increase (Insert:............% or None)

Decrease (Insert:............% or None)
This increase or decrease shall apply to................*

(End of clause)

* Insert in the blank the designation(s) to which the percentages apply, such as: (1) the total contract quantity: (2) item 1 only: (3) each quantity specified in the delivery schedule of the "Time of Delivery" clause: (4) the total item quantity for each destination; (5) the total quantity of each item without regard to destination.

7-103.5 *Inspection.*

(a) The following clause shall be inserted in all fixed-price supply contracts, except as provided in (b) and (c) below.

INSPECTION (1958 MAY)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby; or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract; *provided*, that in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

(End of clause)

(b) The clause in (a) above shall be included in all fixed-price incentive contracts except that paragraph (b) thereof shall be deleted and the following substituted:

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. Prior to the establishment of the total final price, the cost of replacement or correction shall be considered as a cost incurred, or to be incurred, for the purpose of negotiating the total final negotiated cost under the incentive price revision clause of this contract. After the establishment of the total final price, all replacements or corrections made by the Contractor shall be accomplished at no increase in the total final price. If the Contractor fails either promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies, and equitably reduce any target price, or, if it is established, the total final price of this contract; or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default". Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies, and equitably reduce any target price or, if it is established, the total final price of this contract. Failure to agree to such equitable reduction shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". (1962 NOV)

(c) The clause set forth in (a) above shall be included in contracts utilizing the clause in 7–109.3 except that paragraph (b) shall be deleted and the following substituted:

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. Prior to the establishment of the redetermined prices, the cost of replacement or correction shall be considered as a cost incurred, or to be incurred, for the purpose of negotiation to redetermine the fair and reasonable contract prices under the price redetermination clause of this contract. After the establishment of the redetermined prices all replacements shall be accomplished at no increase in the redetermined prices. If the Contractor fails either promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to such replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and equitably reduce the initial contract prices, or if it is established, the redetermined prices of this contract, or, (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default". Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies, and equitably reduce the initial contract price or, if it is established, the redetermined prices of this contract. Failure to agree to such equitable reduction shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". (1962 NOV).

(d) The following paragraphs (f) and (g) shall be added when the contract provides for the performance of Government Procurement Quality Assurance at source:

(f) When requested by the authorized Government representative, the Contractor shall furnish to the Government:

- (i) advance notification prior to starting inspections or tests in accordance with provisions contained in or referenced by this contract; and
- (ii) advance notification when supplies will be ready for Government inspection.

(g) When the advance notification in (f) above is requested, the authorized Government representative shall specify the period and method of such advance notification; however, such requests shall not require more than two (2) workdays of advance notification if the Government representative is in residence in the Contractor's plant nor more than seven (7) workdays of advance notification in other instances. Notification shall be furnished to the Government representative designated in the request. (1977 SEP)

7-103.6 *Title and Risk of Loss.*

TITLE AND RISK OF LOSS (1968 JUN)

(a) Unless this contract specifically provides for earlier passage of title, title to supplies covered by this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession.

(b) (1) Unless this contract specifically provides otherwise, risk of loss of or damage to supplies covered by this contract shall remain with the Contractor until, and shall pass to the Government upon:

- (i) delivery of the supplies to a carrier, if transportation is f.o.b. origin;
- (ii) acceptance by the Government or delivery of possession of the supplies to the Government at the destination specified in this contract, whichever is later, if transportation is f.o.b. destination.

(2) Notwithstanding (1) above, the risk of loss of or damage to supplies which so fail to conform to the contract as to give a right of rejection shall remain with the Contractor until cure or acceptance, at which time (1) above shall apply.

(c) Notwithstanding (b) above, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

7-103.7 *Payments.*

PAYMENTS (1958 JAN)

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or fifty percent (50%) of the total amount of this contract.

(End of clause)

In contracts for the furnishing of transportation and accessorial services there will be substituted for the word "proper" above, the words "properly certified."

7-103.8 *Assignment of Claims.*

ASSIGNMENT OF CLAIMS (1962 FEB)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any monies due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or set-off.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret" or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

The last sentence of paragraph (a) of the foregoing clause shall be included in contracts only in time of war, or national emergency proclaimed by the President (including the National Emergency Proclamation of December 16, 1950), or by Act or Joint Resolution of the Congress and shall not be included in contracts entered into after such war or national emergency has been terminated; *provided*, that in cases where special circumstances make it advisable in the best interests of the Government, and in accordance with Departmental procedures, such sentence may be omitted. In any event the sentence will be deleted from negotiated contracts entered into with foreign contractors. Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended by Public Law 30, 82d Congress, the effect of the last sentence of paragraph (a) of the foregoing clause is that payments to be made to an assignee after 15 May 1951 of any monies due or to become due under the contract shall not be subject to reduction or set-off for any liability of any nature of the contractor to the Government which arises independently of the contract, or for any liability of the contractor on account of (i) renegotiation under any renegotiation statute or under any statutory renegotiation clause in the contract, (ii) fines, (iii) penalties (which term does not include amounts which may be collected or withheld from the contractor in accordance with or for failure to comply with the terms of the contract), or (iv) taxes, Social Security contributions, or the withholding or nonwithholding of taxes or Social Security contributions, whether arising from or independently of the contract. The assignee is required by said Act, as amended, to "File written notice of the assignment together with a true copy of the instrument of assignment with (i) the contracting officer or the head of his department or agency; (ii) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (iii) the disbursing officer, if any, designated in such contract to make payment."

When Standard Form 32 is used, the form need not be changed to delete the parenthetical sentence at the end of paragraph (a) of the clause.

When a contract is to be assigned pursuant to the above clause, the assignee shall forward to the administrative contracting officer, the disbursing officer, and the surety, if any, the notice and instrument of assignment in the number of copies indicated below:

(i) To the administrative contracting officer—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The administrative contracting officer shall acknowledge receipt by signing and dating all copies of the notice of assignment and shall—

    (A) file the true copy of the instrument of assignment and the original of the notice in the contract file,
    (B) forward two copies of the notice to the disbursing officer designated in the contract to make payment,
    (C) return a copy of the notice to the assignee, and
    (D) advise the procuring contracting officer that the assignment has been made.

(ii) To the surety or sureties, if any—a true copy of the instrument of assignment and an original and three copies of the notice of assignment. The surety shall return three acknowledged copies of the notice to the assignee who shall forward two copies to the disbursing officer designated in the contract.

(iii) To the disbursing officer designated in the contract to make payment—a true copy of the instrument of assignment and an original and one copy of the notice of assignment. The disbursing officer shall acknowledge and return to the assignee the copy of the notice and shall file the true copy of the instrument and original notice.

If the assignee releases the contractor from the assignment of claims under an existing contract, the contractor, in order to receive payment of the balance due under the contract, is required to file a written notice of such release, with a true copy of the instrument of release of assignment, with the parties with whom the assignee was required to file the notice and instrument of assignment. The disbursing officer shall acknowledge the notice of release to the assignee.

7-103.9 *Additional Bond Security.*

ADDITIONAL BOND SECURITY (1949 JUL)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

(End of clause)

7-103.10 *Federal, State, Local and Foreign Taxes.*

(a) *Advertised and Certain Negotiated Contracts.* In accordance with 11-401.1, insert the following clause.

FEDERAL, STATE, AND LOCAL TAXES (1971 NOV)

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and–

(1) results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase, *provided* the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to the Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

(c) Paragraph (b) above shall not be applicable to social security taxes or to any other employment tax.

(d) No adjustment of less than $100 shall be made in the contract price pursuant to paragraph (b) above.

(e) As used in paragraph (b) above, the term "contract date" means the date set for bid opening, or if this is a negotiated contract, the contract date. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(f) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon the request of the Contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax; *provided* that, evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the contract price will be furnished only at the discretion of the Government.

(g) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price and shall take action with respect thereto as directed by the Contracting Officer.

(End of clause)

(b) *Noncompetitive Negotiated Contracts.* In accordance with 11-401.2, insert the following clause.

FEDERAL, STATE, AND LOCAL TAXES (1960 JUL)

(a) As used throughout this clause, the term "contract date" means the date of this contract. As to additional supplies or services procured by modification of this contract, the term "contract date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes, to the extent allocable to this contract, all Federal, State, and local taxes which, on the contract date:

(i) by Constitution, statute, or ordinance, are applicable to this contract, or to the transactions covered by this contract, or to property or interests in property; or

(ii) pursuant to written ruling or regulation, the authority charged with administering any such tax is assessing or applying to, and is not granting or honoring an exemption for, a Contractor under this kind of contract, or the transactions covered by this contract, or property or interests in property.

(c) Except as may be otherwise provided in this contract, duties in effect on the contract date are included in the contract price, to the extent allocable to this contract.

(d)(1) If the Contractor is required to pay or bear the burden—

(i) of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraphs (b) and (c), or of a tax or duty specifically excluded from the contract price by a provision of this contract; or

(ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) of any interest or penalty on any tax or duty referred to in (i) or (ii) above;

the contract price shall be increased by the amount of such tax, duty, interest, or penalty allocable to this contract; *provided*, that the Contractor warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise; and *provided further*, that liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which:

- (i) was to be included in the contract price pursuant to the requirements of paragraphs (b) and (c),
- (ii) was included in the contract price, or
- (iii) was the basis of an increase in the contract price; the contract price shall be decreased by the amount of such relief, refund, or drawback allocable to this contract, or the allocable amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) This paragraph (d) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government; excess profits taxes, capital stock taxes, unemployment compensation taxes; or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(5) No adjustment of less than $100 is required to be made in the contract price pursuant to this paragraph (d).

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.

(f)(1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may be expected to result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

(c) *Contracts in United States Possessions or Puerto Rico.* In accordance with 11-401.3, insert the following supplementary clause.

TAXES (1963 NOV)

The term "local taxes" as used in the clause of this contract entitled "Federal, State, and Local Taxes" includes taxes imposed by a possession of the United States and the Commonwealth of Puerto Rico.

(End of clause)

(d) *Foreign Contracts not With Foreign Governments.*

(1) In accordance with 11-403.2(a), insert the following clause:

TAXES, DUTIES, AND CHARGES FOR DOING BUSINESS (1977 JAN)

(a) To the extent that this contract provides for the furnishing of supplies or the performance of services outside the United States, its possessions, and Puerto Rico, the following clause is applicable in lieu of the clause in this contract, if any, entitled "Federal, State, and Local Taxes."

(b) As used throughout this clause, the words and terms defined in this paragraph shall have the meanings set forth herein.

(i) The term "country concerned" means any country in which expenditures under this contract are made.

(ii) The words "tax" and "taxes" include fees and charges for doing business that are levied by the government of the country concerned or by political subdivisions thereof.

(iii) The term "contract date" means the date of this contract or, if this is a formally advertised contract, the date set for bid opening; as to additional supplies or services procured by modification to this contract, the term means the date of the modification.

(c) Except as may be otherwise provided in this contract, the contract price includes all taxes and duties in effect and applicable to this contract on the contract date, except taxes and duties (i) from which the Government of the United States, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or political subdivision thereof, or (ii) which the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d)(1) If the Contractor is required to pay or bear the burden—

(i) of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraph (c) hereof, or was specifically excluded from the contract price by a provision of this contract; or

(ii) of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) of any interest or penalty on any tax or duty referred to in (i) or (ii) above,

the contract price shall be correspondingly increased; *provided* that the Contractor warrants in writing that no amount of such tax, duty, or increase therein was included in the contract price as a contingency reserve or otherwise; and *provided further*, that liability for such tax, duty, increase therein, interest or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer or to comply with the provisions of subparagraph (e) (1) below.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, increase therein, interest or penalty which (i) was to be included in the contract price pursuant to the requirements of paragraph (c), (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the contract price shall be correspondingly decreased or the amount of such relief, refund, or drawback shall be paid to the Government of the United States, as directed by the Contracting Officer, unless, with respect to (i), the Contractor can show, in a manner acceptable to the Contracting Officer, that such tax, duty, increase therein, interest, or penalty had not been included in the contract price. The contract price also shall be correspondingly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer or to comply with the provisions of subparagraph (e)(1) below, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, increase therein, interest or penalty. Interest paid or credited to the Contractor incident to a refund of taxes or duties shall inure to the benefit of the Government of the United States to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government of the United States for such taxes or duties.

(3) If the Contractor obtains a reduction in his tax liability under the United States Internal Revenue Code of 1954, as amended (Title 26, U.S. Code), on account of the payment of any tax or duty which either (i) was to be included in the contract price pursuant to the requirements of paragraph (c) of this clause, (ii) was included in the contract price, or (iii) was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs, unless, with respect to (i), the Con-

tractor can show in a manner acceptable to the Contracting Officer, that such tax or duty had not been included in the contract price.

(4) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved

(5) No adjustment in the contract price or payment or credit to the United States is required pursuant to this paragraph (d) if the total amount thereof for the contract period will be less than one hundred dollars ($100).

(6) Except for the second sentence of subparagraph (2) of this paragraph (d), subparagraphs (1) and (2) of this paragraph (d) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government; excess profits taxes; capital stock taxes; transportation taxes; unemployment compensation taxes; or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(e)(1) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or political subdivisions thereof, or which the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(2) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to taxes or duties which reasonably may be expected to result in either an increase or a decrease in the contract price.

(3) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the cost of such action, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

(2) In accordance with 11-403.2(a), insert a clause substantially as follows:

FIXED-PRICE, INTO-PLANE, FUEL CONTRACTS AT OVERSEAS LOCATIONS (JAN 1979)

(a) As used throughout this clause, the following terms shall have the meanings set forth below:

(1) The term "direct tax" means any foreign tax, duty, fee, or like charge, directly applicable to the completed supplies or services covered by this contract. It includes any foreign tax, duty, fee, or like charge, directly applicable to the importation, exportation, production, manufacture, distribution, transportation, storage, withdrawal from storage, handling, receipt, sale, or delivery of such supplies or services. The term does not include unemployment compensation taxes; social security taxes; income taxes; excess-profits taxes; capital stock taxes; property taxes, except such property taxes as are assessed either on completed supplies covered by this contract or on the Contractor's interest in or use of Government-owned property supplied under this contract;

and such other taxes as are not within the definition of the term "direct tax" as set forth in this paragraph. If this contract provides for the furnishing of supplies in Puerto Rico, the term "direct tax" also includes the U.S. import tax on petroleum.

(2) The term "nonrefundable tax" means any direct tax which the Contractor is required to pay and, in respect to which, he is unable to obtain a refund or drawback.

(b) The contract prices do not include any direct tax.

(c) The Contractor shall use all reasonable efforts to collect all refunds or drawbacks due to the Contractor, either in its own right or under any rights and privileges arising out of this contract, of any direct tax which the Contractor is required to pay or bear the burden of.

(d) The Government shall reimburse the Contractor for any nonrefundable tax. Contractor invoices for such reimbursement shall be submitted separately on a monthly basis and, when applicable, shall show credit deductions for all refunds or drawbacks received by the Contractor.

(e) Prior to submitting an initial invoice for any nonrefundable tax, the Contractor shall furnish the Contracting Officer, for approval, a written statement in quadruplicate showing the nature of the nonrefundable tax, the unit rate thereof in U.S. dollars per U.S. gallon, and the airport and grade of product involved. The Contractor shall notify the Contracting Officer by a written statement in quadruplicate of any changes in said unit rates and of any additional nonrefundable tax. The Contracting Officer will inform the Accounting and Finance Office of his approval or disapproval of the rates for which reimbursement is sought. All invoices for any nonrefundable tax submitted by the Contractor shall be forwarded by the Contractor directly to the Accounting and Finance Officer, Attn: Examination Section, DLA Administrative Support Center, Cameron Station, Alexandria, Virginia, 22314, who will certify the invoices for payment only in accordance with unit rates for such taxes as approved by the Contracting Officer.

(f) The provisions of this paragraph (f) shall apply only to the extent that this contract is performed within any of the following foreign countries: Australia, the Bahamas, Bahrain, Barbados, Belgium, Canada, Republic of China, Denmark (including Greenland), Ethiopia, Federal Republic of Germany (including West Berlin), France, Greece, Iceland, Iran, Italy, Japan, Republic of Korea, Luxembourg, the Netherlands, New Zealand, Norway, Panama, the Philippines, Portugal (including the Azores), Saudi Arabia, Spain, Thailand, Trinidad and Tobago, Turkey, the United Kingdom (including Anegada Island, Antigua Island, Ascension Island, Bermuda, British Indian Ocean Territories (Diego Garcia), Mahe Island, and Turks and Caicos Island), and Yugoslavia. The contract price, including the price in subcontracts, does not include any tax or duty which the Government of the United States and the government of any of the foregoing countries have agreed shall not apply to expenditures in that country by the United States. If any such tax or duty has been included in the contract price through error or otherwise, the contract price shall be correspondingly reduced.

(End of clause)

(e) *Fixed-Price Contracts With Foreign Governments.* In accordance with 11-403.2(b), insert the following clause.

TAXES (1960 JUL)

(a) The contract price, including the prices in any subcontracts hereunder, does not include any tax or duty which the Government of the United States and the Government of..............have agreed shall not be applicable to expenditures made by the United States in..............., or any tax or duty not applicable to this contract or any subcontracts hereunder, pursuant to the laws of............... If any such tax or duty has been included in the contract price through error or otherwise, the contract price shall be correspondingly reduced.

(b) If, after the contract date, the Government of the United States and the Government of.............shall agree that any tax or duty included in the contract price shall not be applicable to expenditures by the United States in ...., the contract price shall be reduced accordingly.

(End of clause)

7-103.11 *Default.*

DEFAULT (1969 AUG)

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

- (i) if the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or
- (ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure

within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services; *provided*, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer, failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

(End of clause)

7-103.12 *Disputes.*

(a) The following clause shall be included in all contracts subject to the Contract Disputes Act unless exempted by the Secretary pursuant to 41 U.S.C. 602(c).

DISPUTES (1980 JUNE)

(a) This contract is subject to the Contract Disputes Act of 1978 (P.L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c) (1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this contract. However, a written demand by the Contractor seeking the payment of money in excess of $50,000 is not a claim until certified in accordance with (d) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim pursuant to the Act by complying with the submission and certification requirements of this clause.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For contractor claims of more than $50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For contractor claims of $50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request.

For contractor-certified claims in excess of $50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) Interest on the amount found due on a contractor claim shall be paid from the date the Contracting Officer receives the claim, or from the date payment otherwise would be due, if such date is later, until the date of payment.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

(b) The following paragraph shall be substituted for paragraph (h) of the clause in (a) above as required under the circumstances described in 1-314(k)(2) and (3).

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or related to the contract, and comply with any decision of the Contracting Officer. (1980 JUNE)

7-103.13 *Reserved.*

(next page is 7:17)

7-103.14 *Discounts.*

DISCOUNTS (1968 JUN)

In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of these points, or from the date the correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of clause)

When SF 33A is used, the above clause will he substituted for subparagraph (b) of clause 9, *Discounts* (see 16-101.1(ii)).

7-103.15 *Certain Communist Areas.* In accordance with 6-403, insert the following clause.

CERTAIN COMMUNIST AREAS (1980 FEB)

(a) Unless he first obtains the written approval of the Contracting Officer, the Contractor shall not acquire for use in the performance of this contract:

- (i) any supplies or services originating from sources within the communist areas of North Korea, Vietnam, or Cuba;
- (ii) any supplies, however processed, which are or were located in or transported from or through North Korea, Vietnam, or Cuba .

(b) The Contractor agrees to insert the provisions of this clause, including this paragraph (b), in all subcontracts hereunder.

(End of clause)

7-103.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.*

(a) In accordance with 12-301 and 12-302, insert the following clause.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (1971 NOV)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight (8) hours or in excess of his standard workweek of forty (40) hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three (3) years from the completion of the contract.

(End of clause)

(b) The following clause shall be used, in addition to the clause in (a) above, when firefighters or fireguards are to be used.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION — FIREFIGHTERS AND FIREGUARDS (1974 APR)

A workday consisting of a fixed and recurring 24-hour period commencing at the same time on each calendar day may be used in lieu of the calendar day in applying the daily overtime provisions of the Act to the employment of firefighters or fireguards under the following conditions:

(i) Where such employment is under a platoon system requiring such employees to remain at or within the confines of their post of duty in excess of eight (8) hours per day in a standby or on-call status; and

(ii) If the use of such alternate 24-hour day has been agreed upon between the employer and such employees or their authorized representatives before performance of the work; and

(iii) *provided* that in determining the daily and weekly overtime requirements of the Act in any particular worksheet of any such employee whose established worksheet begins at an hour of the calendar day different from the hour when such agreed 24-hour day commences, the hours worked in excess of eight (8) hours in any such 24-hour day shall be counted in the established workweek (of 168 hours commencing at the same time each week) in which such hours are actually worked.

(End of clause)

7–103.17 *Walsh-Healey Public Contracts Act.*

WALSH-HEALEY PUBLIC CONTRACTS ACT (1958 JAN)

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

(End of clause)

7-103.18 *Equal Opportunity Clause.*

(a) *Government Contracts.* The following clause shall be included in all contracts (and modifications thereof if the clause was not included in the original contract) unless exempted in accordance with 12-808.

EQUAL OPPORTUNITY (1978 SEP)

(If, during any twelve (12) month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded Federal contracts and/or subcontracts which have an aggregate value in excess of $10,000, the Contractor shall comply with (1) through (7) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.)

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

(b) *Federally Assisted Construction Contracts.* The following clause shall be included as a condition of any grant, contract, loan, insurance or guarantee involving Federally assisted construction unless exempted in accordance with 12-808.

EQUAL OPPORTUNITY (FEDERALLY ASSISTED CONSTRUCTION) (1978 SEP)

If, during any twelve (12) month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded Federal contracts and/or subcontracts which have an aggregate value in excess of $10,000, the Contractor shall comply with (1) through (7) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.)

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the Regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity clause.

During the performance of this contract, the Contractor agrees as follows.

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include but not be limited to the following. Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance *Provided, however*, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the ad-

ministering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States. The applicant further agrees that it will be bound by the above Equal Opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above Equal Opportunity clause is not applicable to any agency, instrumentality or sub-division of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and Federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant, and refer the case to the Department of Justice for appropriate legal proceedings

(End of clause)

7-103.19 *Officials Not To Benefit.*

OFFICIALS NOT TO BENEFIT (1949 JUL)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

7-103.20 *Covenant Against Contingent Fees.*

COVENANT AGAINST CONTINGENT FEES (1958 JAN)

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

(End of clause)

7-103.21 *Termination for Convenience of the Government.*

(a) In accordance with 8-705.1(a), insert the following clause.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1968 FEB)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is so terminated, the Contractor shall be compensated in accordance with ASPR Section VIII, in effect on this contract's date.

(End of clause)

(b) In accordance with 8-701(a), insert the following clause.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1974 OCT)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall,

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts,
- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause,
- (vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;
- (vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above, *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer, and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;
- (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
- (ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; *provided*, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer, as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

- (i) for completed supplies or services accepted by the Government (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;
- (ii) the total of—
  - (A) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (e)(i) hereof;
  - (B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (A) above), and

(C) a sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; *provided*, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontract thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract

The total sum to be paid to the Contractor under (i) and (ii) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e)(i) and (ii)(A) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), (e), and (i) hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c), (e), or (i) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) or (i) hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c), (e) or (i) hereof, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, the Contractor may file with the Contracting Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause must be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Contracting Officer

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government, *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(End of clause)

7-103.22 *Authorization and Consent.* In accordance with 9-102.1, insert the following clause.

AUTHORIZATION AND CONSENT (1964 MAR)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract), of any invention described in and covered by a patent of the United States (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract, or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (a) specifications or written provisions now or hereafter forming a part of this contract, or (b) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(End of clause)

7-103.23 *Notice and Assistance Regarding Patent* and Copyright Infringement. In accordance with 9-104, insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (1965 JAN)

The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(c) This clause shall be included in all subcontracts.

(End of clause)

7-103.24 *Responsibility for Inspection.* In accordance with 14-101.1, insert the following clause

RESPONSIBILITY FOR INSPECTION (1968 SEP)

Notwithstanding the requirements for any Government inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by the Government, the Contractor shall perform or have performed the inspections and tests required to substantiate that the supplies and services provided under the contract conform to the drawings, specifications and contract requirements listed herein, including if applicable the technical requirements for the manufacturers' part number specified herein

(End of clause)

7-103.25 *Commercial Bills of Lading Covering Shipments Under FOB Origin Contracts.* In accordance with 19-217.1(a), insert the following clause.

COMMERCIAL BILLS OF LADING COVERING F.O.B. ORIGIN SHIPMENTS (1969 DEC)

Prior to releasing any shipments for the Government, the Contractor shall insure that the commercial shipping documents are annotated with the legend

"Transportation hereunder is for the U S. Department of Defense and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government "

(End of clause)

7-103.26 *Pricing of Adjustments.*

PRICING OF ADJUSTMENTS (1970 JUL)

When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, such costs shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract

(End of clause)

7-103.27 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era* In accordance with 12-1402, insert the following clause:

AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (1976 JUL)

(a) The Contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans' status in all employment practices such as the following employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship

(b) The Contractor agrees that all suitable employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs The Contractor further agrees to provide such reports to such local office regarding employment openings and hires as may be required State and local government agencies holding Federal contracts of $10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e)

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and nonveterans The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the Contractor from any requirements in Executive Orders or regulations regarding nondiscrimination in employment

(d) The reports required by paragraph (b) of this clause shall include, but not be limited to, periodic reports which shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one hiring location in a State, with the central office of that State employment service Such reports shall indicate for each hiring location (i) the number of individuals hired during the reporting period, (ii) the number of nondisabled veterans of the Vietnam era hired, (iii) the number of disabled veterans of the Vietnam era hired, and (iv) the total number of disabled veterans hired The reports should include covered veterans hired for on-the-job training under 38 U S C 1787 The Contractor shall submit a report within thirty (30) days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location The Contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or of the Secretary of Labor Documentation would include personnel records respecting job openings, recruitment and placement

(e) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State As long as the Contractor is contractually bound to these provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts The Contractor may advise the State system when it is no longer bound by this contract clause

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands

(g) The provisions of paragraphs (b), (c), (d) and (e) of this clause do not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening

(h) As used in this clause

(i) ("All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories production and nonproduction, plant and office, laborers and mechanics, supervisory and nonsupervisory, technical, and executive, administrative, and professional openings as are compensated on a salary basis of less than $25,000 per year This term includes full-time employment, temporary employment of more than three (3) days duration, and part-time employment It does not include openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be for the best interest of the Government

(ii) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(iii) "Openings which the Contractor proposes to fill from within his own organization" means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the Contractor proposes to fill from regularly established "recall" lists.

(iv) "Openings which the Contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the Contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the Contractor and representatives of his employees.

(i) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veterans' Readjustment Assistance Act, hereinafter referred to as the "Act" (38 U.S.C. 2012).

(j) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs, provided by or through the Contracting Officer. Such notice shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The Contractor will include the provisions of this clause in every subcontract or purchase order of $10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

(End of clause)

7-103.28 *Affirmative Action for Handicapped Workers.* In accordance with 12-1302, insert the following clause:

AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (1976 MAY)

(a) The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the Contractor's noncompliance with the requirements of this clause, action for noncompliance may be taken in accordance with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the Contracting Officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.

(e) The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.

(f) The Contractor will include the provisions of this clause in every subcontract or purchase order of $2,500 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to section 503 of the Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

(End of clause)

7-103.29 *Clean Air and Water.* In accordance with 1-2302.2, insert the following clause.

CLEAN AIR AND WATER (1975 OCT)

(*Applicable only if the contract exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any one year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c) (1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or the contract is not otherwise exempt.*)

(a) The Contractor agrees as follows:

(i) to comply with all the requirements of section 114 of the Clean Air Act, as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract;

(ii) that no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing;

(iii) to use his best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed; and

(iv) to insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph (iv).

(b) The terms used in this clause have the following meanings.

(1) The term "*Air Act*" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(2) The term "*Water Act*" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(3) The term "*clean air standards*" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), an approved implementation procedure or plan under section 111(c) or section

111(d), respectively, of the Air Act (42 U.S.C. 1857c–6(c) or (d)), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c–7(d)).

(4) The term "*clean water standards*" means any enforceable limitation, control, condition, prohibition, standard or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

(5) The term "*compliance*" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency in accordance with the requirement of the Air Act or Water Act and regulations issued pursuant thereto.

(6) The term "*facility*" means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor, subcontractor, to be utilized in the performance of a contract or subcontract. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location or site shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are colocated in one geographical area.

(7) The term "*nonexempt contract or subcontract*" means a contract or subcontract of more than $100,000 which is not otherwise exempted pursuant to the EPA regulations implementing the Air Act and Water Act (40 CFR 15.5), as further implemented in ASPR 1–2302.4 or in FPR 1–1.2302–4 (whichever is applicable) and the procedures of the Department awarding the contract.

(End of clause)

7–104 Clauses to be used when applicable.

7–104.1 *Clauses for Fixed Price Supply Contracts Involving Construction Work.*

(a) In accordance with 12–106 and 18–703, insert the clauses in 7–602.23.

(b) In accordance with 7–602.20 and 7–602.24, insert the clauses set forth therein in addition to the clause in 7–104.3.

7–104.2 *Workmen's Compensation and War Hazard Insurance Overseas.*

(a) In accordance with 10–403(a), insert the following clause.

WORKMEN'S COMPENSATION INSURANCE (DEFENSE BASE ACT) (1960 JAN)

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable, a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(End of clause)

(b) If a contract would otherwise be subject to 10–403(a) but 10–403(d) applies to some or all of the contractor's employees by reason of waiver by the Secretary of Labor, the provisions of 10-501.1(b) and (c) apply; and the following clause shall be included in the contract (see also 10–403(e)).

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

WORKMEN'S COMPENSATION AND WAR HAZARD INSURANCE OVERSEAS (1968 JUL)

(a) This clause applies if the Contractor employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to Workmen's Compensation Insurance under the Defense Base Act (42 U.S.C. 1651). On behalf of such waived employees, the Contractor, before commencing performance under this contract shall provide, and thereafter maintain, at least such Workmen's Compensation Insurance or the equivalent as may be required by the laws of the country of which such waived employees are nationals. The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act would be applicable but for the waiver, a clause similar to this paragraph (a), including this sentence, imposing on all such subcontractors a like requirement to provide such Workmen's Compensation Insurance coverage.

(b) This paragraph applies if the Contractor or any of his subcontractors employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq). On behalf of such waived employees the Contractor shall subject to reimbursement as elsewhere herein provided, afford protection the same as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., with respect to the definition of war hazard risks (injury, death, capture or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by Workmen's Compensation Insurance or equivalent. Unless the Contractor elects to directly assume the liability to subcontractor employees created by this clause, the Contractor further agrees to insert in all subcontracts hereunder to which the War Hazards Compensation Act would be applicable but for the waiver, a clause similar to this paragraph (b), including this sentence, imposing on all such subcontractors a like requirement to provide War Hazard benefits.

(End of clause)

(c) When the clause in (b) above is required, the following clause shall also be inserted in the contract, but only if the Head of a Procuring Activity or his designee has decided that the contractor shall not purchase insurance against the liability described in 10-403(d)(2) (see also 10-501.1(c)). |

REIMBURSEMENT FOR WAR HAZARD LOSSES (1968 JUL)

(a) The Contractor's costs for assuming liability for employee protection against war hazard risks pursuant to paragraph (b) of the clause of this contract entitled "Workmen's Compensation and War Hazard Insurance" shall be an allowable cost under this contract, subject to the following:

- (i) The Contractor shall submit proof of loss files to support payment or denial of each claim.
- (ii) As soon as practicable, but no later than one year after the expiration or termination of this contract, unless the time shall be extended by Contracting Officer, the Contractor shall, convert each claim which has not been finally settled into a suitable arrangement under which the claim can be extinguished by the Contractor with a lump sum payment. Subject to approval by the Contracting Officer, the Contractor shall thereupon obtain necessary release documents and settle the claim by lump sum arrangement, taking into account any payments previously made.
- (iii) As to any potential claim which is known to, or reasonably should be within the knowledge of, the Contractor at the time of final settlement under this contract, the Contractor shall, at that time, present to the Government a full report and evaluation, indicating as to each potential claim that a reasonable investigation of the circumstances has been made, the results thereof, an evaluation of the merits, and an estimate of the amount involved should the potential claim mature into a valid obligation.
- (iv) The cost of insurance against a liability reimbursable under this clause shall not be an allowable cost or otherwise recoverable under this contract.

(b) The Government may require the Contractor to assign to the Government in the manner, at the times, and to the extent directed by the Contracting Officer all right, title and interest of the Contractor to any refund, rebate or recapture arising out of any claim settlement. The Government may handle such assigned entitlements in such manner as it deems appropriate and may recover any benefits related to claim settlements.

(c) The Contractor shall, as soon as practicable after an occurrence which appears to give rise to a claim under this portion of the contract, perform such investigations as may be appropriate and promptly notify the Contracting Officer in writing of any additional amount estimated to be necessary to be obligated on account of such claim or potential claim. In addition, the Contractor shall give the Government or its representatives immediate written notice of any suit or action filed, the cost or expense of which may be reimbursable to the Contractor under this clause. The Contractor agrees to render full assistance to the Government in connection with any third party suit or claim relating to this clause or its subject matter which the Government elects to prosecute or defend in its own behalf.

(End of clause)

7-104.3 *Buy American Act and the Balance of Payments Program.* The following clause shall be inserted in all contracts not utilizing small purchase procedures for supplies and in contracts for services which require the furnishing of supplies (e.g., the leasing of equipment), in accordance with 6-103.4, 6-103.7, and 6-803.2(a)(i) - (xi).

BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM (1980 OCT)

(a) This clause implements the Buy American Act (41 U.S.C. Section 10a-d) and the Department of Defense Balance of Payments Program by providing a preference to domestic end products over foreign end products except for certain foreign end products which meet the requirements for classification as qualifying country end products. For the purpose of this clause—

(i) "Components" means those articles, materials, and supplies which are directly incorporated into end products.

(ii) "Qualifying country component" means (A) an item mined, produced, or manufactured in a participating country or in an FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (B) any item listed in a defense cooperation country agreement.

(iii) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts but excluding installation and other services to be performed after delivery.

(iv) "Domestic end product" means (A) an unmanufactured end product which has been mined or produced in the United States, or (B) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (A) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (B) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-104.4).

(v) "Foreign end product" means an end product other than a domestic end product.

(vi) "Qualifying country end product" means (A) a participating country end product; (B) an FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (C) a defense cooperation country agreement listed item.

(vii) "Participating country end product" means (A) an unmanufactured end product mined or produced in a participating country, or (B) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid.

(viii) "FMS/Offset arrangement country end product" means (A) an unmanufactured end product mined or produced in an FMS/offset arrangement country, or

(B) an end product manufactured in an FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is, in fact, paid. To obtain the waivers necessary to accord preferential treatment for an FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).

(ix) "Defense Cooperation country end product" means an item listed in the defense cooperation country agreement and produced in that country.

(b) The contractor agrees that there will be delivered under this contract only domestic end products *unless*, in its offer, it specified delivery of foreign end products in the clause entitled Buy American Act and Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the contractor to supply a qualifying country end product or, at the contractor's option, a domestic end product. An offer based on supplying a nonqualifying country end product, if accepted, will permit the contractor to supply a product without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with the policies and procedures of Section VI.

(End of clause)

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7-104.4 *Notice to the Government of Labor Disputes.* Insert the following clause in all contracts involving the furnishing or production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Procuring Activity concerned determines to be appropriate for the use of such a clause.

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (1958 SEP)

(a) Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify his next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

(End of clause)

7-104.5 *Patent Indemnity.* In accordance with 9-103 and 9-103.1, insert the following clause.

PATENT INDEMNITY (1975 JUN)

If the amount of this contract is in excess of $10,000, the Contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the Contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (i) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the Contractor: (ii) an infringement resulting from addition to, or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the Contractor; or (iii) a claimed infringement which is settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

(a) In accordance with 9-103.1(b) and 9-103.3, add one of the following sentences:

The foregoing shall not apply to the following:
(Specifically identify the items to be
excluded from the Patent Indemnity clause.) (1964 SEP)

or

The foregoing shall apply only to the following:
(Specifically identify the items to which
the Patent Indemnity clause applies.) (1964 SEP)

(b) In accordance with 9–103.4, insert the following clause.

WAIVER OF INDEMNITY (1955 JAN)

Any provision of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in the performance of this contract, of any invention covered by the United States patents identified as listed below, and waives indemnification by the Contractor with respect to such patents: (Identify the patents by number or by other means if more appropriate).

(End of clause)

7–104.6 *Filing of Patent Applications*. In accordance with 9–106, insert the following clause.

FILING OF PATENT APPLICATIONS (1969 DEC)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Secret" or higher, the Contractor shall, citing the thirty (30) day provision below transmit the proposed application to the Contracting Officer for determination whether, for reasons of national security, such application should be placed under an order of secrecy or sealed in accordance with the provisions of 35 U.S.C. 181–18 or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations; and the Contractor shall observe any instructions of the Contracting Officer with respect to the manner of delivery of the patent application to the United States Patent Office for filing, but the Contractor shall not be denied the right to file such patent application. If the Contracting Officer shall not have given any such instructions within thirty (30) days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) The Contractor shall furnish to the Contracting Officer, at the time of or prior to the time when the Contractor files or causes to be filed a patent application in the United States disclosing any subject matter of this contract, which subject matter is classified "Confidential," a copy of such application for determination whether for reasons of national security, such application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed in any country, other than in the United States as provided in (a) and (b) of this clause, an application or registration for a patent containing any of said subject matter without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter, and shall also promptly furnish to the Contracting Officer the serial number, filing date, and name of country of any such patent application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts which require security classification markings to be placed on the application.

(e) The substance of this clause shall be included in all subcontracts which cover or are likely to cover classified subject matter.

(End of clause)

7-104.7 *Contract Schedule Subline Items Not Separately Priced.* In accordance with 20-304.2(c)(ii) and at the option of the contracting officer, the following clause may be inserted.

CONTRACT SCHEDULE SUBLINE ITEMS NOT SEPARATELY PRICED—WITHHOLDING OF BILLING AND PAYMENT (1970 NOV)

If the unit price of any contract subline or exhibit subline item contained in the Schedule of this contract is not separately priced ("NSP" entered as the unit price column) and the unit price for such subline item is included within the unit price of a related subline item, payment shall not be made nor shall the Contractor invoice the Government for any portion of a contract line item or exhibit line item which contains a "NSP" subline until the total quantity of all related contract subline items or exhibit subline items have been delivered and accepted. This clause is not applicable to Technical Data.

(End of clause)

7-104.8 *Reporting and Refund of Royalties.*

(a) In accordance with 9-110(d), insert the following clause.

REPORTING OF ROYALTIES (FOREIGN) (1966 OCT)

(a) If this contract is in an amount which exceeds fifty thousand United States dollars ($50,000), the Contractor shall report in writing to the Contracting Officer, during the performance of this contract the amount of royalties paid or to be paid by the Contractor directly to others in the performance of this contract. The Contractor shall also (i) furnish in writing any additional information relating to such royalties as may be requested by the Contracting Officer, and (ii) insert a provision similar to this clause in any subcontract hereunder which involves an amount in excess of the equivalent of fifty thousand United States dollars ($50,000).

(b) The term "royalties" as used herein refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like for the use of or for rights in patents or patent applications.

(End of clause)

(b) In accordance with 9-111, insert the following clause.

REFUND OF ROYALTIES (1968 FEB)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term "royalties" as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use or for rights in patents and patent applications in connection with the performance of this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with the performance of this contract and subcontracts hereunder together with the reasons therefor.

(d) The Contractor will be compensated for royalties reported under (c) above only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. Therefore, to the extent that any royalties which are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within three (3) years subsequent to final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) above, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds two hundred and fifty dollars ($250).

(End of clause)

7-104.9 *Rights in Data and Computer Software.*

(a) *Basic Data Clause.* In accordance with 9-203 and 9-603, insert the following clause.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (1981 MAY)

(a) *Definitions.*

(1) *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information and computer software documentation. *Technical data* does not include computer software or financial, administrative, cost and pricing, and management data or other information incidental to contract administration.

(2) *Computer* - a data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on these data, or a device that operates on analog data by performing physical processes on the data.

(3) *Computer Software* - computer programs and computer data bases.

(4) *Computer Program* - a series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

(5) *Computer Data Base* - a collection of data in a form capable of being processed and operated on by a computer.

(6) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(7) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(8) *Limited Rights* means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for:

(i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(9) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes;

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights.

In addition, any other specific rights not inconsistent therewith listed or described in this contract or described in a license or agreement made a part of this contract.

(10) *Commercial Computer Software* - Computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

(b) *Government Rights*.

(1) *Unlimited Rights*. The Government shall have unlimited rights in:

(i) technical data and computer software resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(iii) computer data bases, prepared under a Government contract, consisting of information supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

(iv) technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense (but see (2)(ii) below);

(v) technical data or computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

(vi) technical data pertaining to end-items; components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, *e.g.*, specification control drawings, catalog sheets, envelope drawings, etc.);

(vii) manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(viii) technical data or computer software which is in the public domain, or has been or is normally released or disclosed by the Contractor or subcontractor without restriction on further disclosure; and

(ix) technical data or computer software listed or described in an agreement incorporated into the schedule of this contract which the parties have predetermined, on the basis of subparagraphs (i) through (viii) above, and agreed will be furnished with unlimited rights.

(2) *Limited Rights*. The Government shall have limited rights in:

(i) technical data, listed or described in an agreement incorporated into the Schedule of this contract, which the parties have agreed will be furnished with limited rights; and

(ii) unpublished technical data pertaining to items, components or processes developed at private expense, and unpublished computer software documentation related to computer software that is acquired with restricted rights, other than such data as may be included in the data referred to in (b)(1)(i), (v), (vi), (vii), and (viii). The word *unpublished*, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure. For the purpose of this definition, delivery of limited rights technical data to or for the Government under a contract does not, in itself, constitute release to the public.

Limited rights shall be effective provided that only the portion or portions of each piece of data to which limited rights are to be asserted pursuant to (2)(i) and (ii) above are identified (for example, by circling, underscoring, or a note), and that the piece of data is marked with the legend below in which is inserted:

A. the number of the prime contract under which the technical data is to be delivered,

B. the name of the Contractor and any subcontractor by whom the technical data was generated, and

C. an explanation of the method used to identify limited rights data.

LIMITED RIGHTS LEGEND

Contract No. ....
Contractor: ....
Explanation of Limited Rights Data Identification Method Used
....
....

Those portions of this technical data indicated as limited rights data shall not, without the written permission of the above Contractor, be either (a) used, released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or, in the case of computer software documentation, for preparing the same or similar computer software, or (c) used by a party other than the Government, except for (i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend, together with the indications of the portions of this data which are subject to such limitations shall be included on any reproduction hereof which includes any part of the portions subject to such limitations.

(3) *Restricted Rights*

(A) The Government shall have restricted rights in computer software, listed or described in a license or agreement made a part of this contract, which the parties have agreed will be furnished with restricted rights, *provided*, however, notwithstanding any contrary provision in any such license or agreement, the Government shall have the rights in (a)(9)(i) through (iv). Such restricted rights are of no effect unless the computer software is marked by the Contractor with the following legend:

RESTRICTED RIGHTS LEGEND
Use, duplication or disclosure is subject to
restrictions stated in Contract No. ....
with .... (*Name of Contractor*) ....

and the related computer software documentation includes a prominent statement of the restrictions applicable to the computer software. The Contractor may not place any legend on computer software indicating restrictions on the Government's rights in such software unless the restrictions are set forth in a license or agreement made a part of this contract prior to the delivery date of the software. Failure of the Contractor to apply a restricted rights legend to such computer software shall relieve the Government of liability with respect to such unmarked software.

(B) Notwithstanding (A) above, commercial computer software and related documentation developed at private expense and not in public domain may, if the Contractor so elects, be marked with the following Legend:

RESTRICTED RIGHTS LEGEND
Use, duplication, or disclosure by the
Government is subject to restrictions
as set forth in paragraph (b)(3)(B) of
the Rights in Technical Data and Computer
Software clause in DAR 7-104.9(a).

____
(Name of Contractor and Address)

When acquired by the Government, commercial computer software and related documentation so legended shall be subject to the following:

(i) Title to and ownership of the software and documentation shall remain with the Contractor.

(ii) Use of the software and documentation shall be limited to the facility for which it is acquired.

(iii) The Government shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime contractors, subcontractors and agents of the Government who have the Government's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the Government to use software, documentation, or information therein, which the Government may already have or obtains without restrictions.

(iv) The Government shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; and to modify the software and documentation or combine it with other software, *provided* that the unmodified portions shall remain subject to these restrictions.

(v) If the Contractor, within sixty (60) days after a written request, fails to substantiate by clear and convincing evidence that computer software and documentation marked with the above

> Restricted Rights Legend are commercial items and were developed at private expense, or if the Contractor fails to refute evidence which is asserted by the Government as a basis that the software is in the public domain, the Government may cancel or ignore any restrictive markings on such computer software and documentation and may use them with unlimited rights. Such written requests shall be addressed to the Contractor as identified in the Restricted Rights Legend.

(4) No legend shall be marked on, nor shall any limitation or restriction on rights of use be asserted as to, any data or computer software which the Contractor has previously delivered to the Government without restriction. The limited or restricted rights provided for by this para-

graph shall not impair the right of the Government to use similar or identical data or computer software acquired from other sources.

(c) Copyright

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies or phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights defined in (a)(7). With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights defined in (a)(8). With respect to computer software which the parties have agreed in accordance with (b)(3) will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

> This material may be reproduced by or for the U.S. Government pursuant to the copyright license under DAR clause 7-104.9(a)(date).

(d) *Removal of Unauthorized Markings*. Notwithstanding any provision of this contract concerning inspection and acceptance, the Government may correct, cancel, or ignore any marking not authorized by the terms of this contract on any technical data or computer software furnished hereunder, if:

(i) the Contractor fails to respond within sixty (60) days to a written inquiry by the Government concerning the propriety of the markings, or

(ii) the Contractor's response fails to substantiate, within sixty (60) days after written notice, the propriety of limited rights markings by clear and convincing evidence, or of restricted rights markings by identification of the restrictions set forth in the contract.

In either case the Government shall give written notice to the Contractor of the action taken.

(e) *Relation to Patents*. Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Limitation on Charges for Data and Computer Software.* The Contractor recognizes that the Government or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data or computer software on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data or computer software which the Government has a right to use and disclose to others, which is in the public domain, or which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data or computer software. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(g) *Acquisition of Data and Computer Software from Subcontractors*

(1) Whenever any technical data or computer software is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data or computer software which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next-higher tier Contractor. However, when there is a requirement in the prime contract for data which may be submitted with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher-tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in technical data or computer software from their subcontractors for themselves.

(End of clause)

(b) *Notice of Certain Limited Rights.* The paragraph (h) set forth below may be added to the clause in (a) above in any contract in which the contracting officer desires notification of limited rights data (see 9-202.2(g)).

(h) (1) Unless the Schedule provides otherwise, and subject to (2) below, the Contractor will promptly notify the Contracting Officer in writing of the intended use by the Contractor or a subcontractor in performance of this contract of any item, component or process for which technical data would fall within paragraph (b)(2) above.

(2) Such notification is not required with respect to:

(i) standard commercial items which are manufactured by more than one source of supply; or

(ii) items, components or processes for which such notice was given pursuant to predetermination of rights in technical data in connection with this contract.

(3) Contracting Officer approval is not necessary under this clause for the Contractor to use the item, component or process in the performance of the contract. (1972 APR)

(c) *Technical Data Clause—Specific Acquisition.* In accordance with 9-203(c), insert the following clause.

RIGHTS IN TECHNICAL DATA—SPECIFIC ACQUISITION (1979 MAR)

(a) *Definition. Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) *Government Rights.* The Government may duplicate, use and disclose in any manner and for any purpose whatsoever, and have others so do, all or any part of the technical data delivered by the Contractor to the Government under this contract.

(c) Copyright

(1) In addition to the rights granted under the provisions of (b) above, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world, of the scope set forth below, under any copyright owned by the Contractor, in any work of authorship prepared for or acquired by the Government under this contract, to reproduce the work in copies or phonorecords, to distribute copies of phonorecords to the public, to perform or display the work publicly, and to prepare derivative works thereof, and to have others do so for Government purposes. With respect to technical data and computer software in which the Government has unlimited rights, the license shall be of the same scope as the rights defined in (a)(7). With respect to technical data in which the Government has limited rights, the scope of the license is limited to the rights defined in (a)(8). With respect to computer software which the parties have agreed, in accordance with (b)(3), will be furnished with restricted rights, the scope of the license is limited to such rights.

(2) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in technical data or computer software prepared for or acquired by the Government under this contract any works of authorship in which copyright is not owned by the Contractor without acquiring for the Government any rights necessary to perfect a copyright license of the scope specified in (c)(1).

(3) As between the Contractor and the Government, the Contractor shall be considered the "person for whom the work was prepared" for the purpose of determining authorship under Section 201(b) of Title 17, United States Code.

(4) Technical data delivered under this contract which carries a copyright notice shall also include the following statement which shall be placed thereon by the Contractor, or should the contractor fail, by the Government:

> This material may be reproduced by or
> for the U.S. Government pursuant to the
> copyright license under DAR clause
> 7-104.9(a)(date).

(d) ***Relation to Patents.*** Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Limitation on Charges for Data.* The Contractor recognizes that the Government, or a foreign government with funds derived through the Military Assistance Program or otherwise through the United States Government, may contract for property or services with respect to which the vendor may be liable to the Contractor for charges for the use of technical data on account of such a contract. The Contractor further recognizes that it is the policy of the Government not to pay in connection with its contracts, or to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for data which the Government has a right to use and disclose to others, which is in the public domain, which the Government has been given without restrictions upon its use and disclosure to others. This policy does not apply to reasonable reproduction, handling, mailing, and similar administrative costs incident to the furnishing of such data. In recognition of this policy, the Contractor agrees to participate in and make appropriate arrangements for the exclusion of such charges from such contracts, or for the refund of amounts received by the Contractor with respect to any such charges not so excluded.

(End of clause)

(d) *Deferred Delivery of Technical Data or Computer Software.* In accordance with 9-502(b), insert the following clause.

DEFERRED DELIVERY OF TECHNICAL DATA OR COMPUTER SOFTWARE (1974 NOV)

The Government shall have the right to require, at any time during the performance of this contract, within two (2) years after either acceptance of all items (other than data or computer software) to be delivered under this contract or termination of this contract, whichever is later, the delivery of any technical data or computer software item identified in this contract as "deferred delivery" data or computer software. The obligation to furnish such technical data required to be prepared by a subcontractor and pertaining to an item obtained from him shall expire two (2) years after the date contractor accepts the last delivery of that item from that subcontractor for use in performing this contract.

(End of clause)

(e) Production of Special Works. In accordance with 9-204.2, insert the following clause:

RIGHTS IN DATA-SPECIAL WORKS (1979 MAR)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All works first produced in the performance of this contract shall be the sole property of the Government, which shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code, and the Government shall own all of the rights comprised in the copyright. The Contractor agrees not to assert or authorize others to assert any rights, or establish any claim to copyright, in such works. The Contractor, unless directed to the contrary by the Contracting Officer, shall place on any such works delivered under this contract the following notice:

> © (Year date of delivery) United States Government as represented by the Secretary of (department). All rights reserved.

In the case of a phonorecord, the © will be replaced by ℗.

(c) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (i) to reproduce in copies or phonorecords, to prepare derivative works, to distribute copies or phonorecords, and to perform or display publicly any portion of a work which is not first produced in the performance of this contract but in which copyright is owned by the contractor and which is incorporated in the work furnished under this contract, and (ii) to authorize others to do so for Government purposes.

(d) Unless written approval of the Contracting Officer is obtained, the Contractor shall not include in any works prepared for or delivered to the Government under this contract any works of authorship in which copyright is not owned by the Contractor or the Government without acquiring for the Government any rights necessary to perfect a license of the scope set forth in (c) above.

(e) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents and employees acting for the Government, against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy or publicity, arising out of the creation, delivery, or use of any works furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in such works.

(f) Nothing contained in this clause shall imply a license to the Government under any patent, or be construed as affecting the scope of any license of other right otherwise granted to the Government under any patent.

(g) Paragraphs (c) and (d) above are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; *provided,* such incorporated material is identified by the Contractor at the time of delivery of such work.

(End of clause)

(f) *Purchase of Existing Motion Pictures or Television Recordings.* In accordance with 9-205.2, insert the following clause:

RIGHTS IN DATA-EXISTING WORKS (1979 MAR)

(a) The term "works" as used herein includes literary, musical, and dramatic works; pantomines and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and works of a similar nature. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) Except as otherwise provided in this contract, the Contractor hereby grants to the Government a nonexclusive, paid-up license throughout the world (i) to distribute, perform publicly, and display publicly the works called for under this contract and (ii) to authorize others to do so for Government purposes.

(c) The Contractor shall indemnify and save and hold harmless the Government, and its officers, agents, and employees acting for the Government, against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy or publicity arising out of the creation, delivery, or use, of any works furnished under this contract, or (ii) based upon any libelous or other unlawful matter contained in same works.

(End of clause)

(g) *Contracts To Be Performed Outside the United States.* In accordance with 9-206, insert the following clause.

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE (FOREIGN) (1975 JUN)

The United States Government may duplicate, use, and disclose in any manner for any purposes whatsoever, including delivery to other governments for the furtherance of mutual defense of the United States Government and other governments, all technical data including reports, drawings and blueprints, and all computer software, specified to be delivered by the Contractor to the United States Government under this contract.

(End of clause)

(h) *Technical Data—Withholding of Payment.* In accordance with 9-504, insert the following clause:

TECHNICAL DATA—WITHHOLDING OF PAYMENT (1976 JUL)

(a) If "Technical Data" (as defined in the clause of this contract entitled "Rights in Technical Data and Computer Software"), or any part thereof, specified to be delivered under this contract, is not delivered within the time specified by this contract or is deficient upon delivery (including having restrictive markings not specifically authorized by this contract), the Contracting Officer may until such data is accepted by the Government, withhold payment to the Contractor of ten percent (10%) of the total contract price or amount unless a lesser withholding is specified in the contract. Payments shall not be withheld nor any other action taken pursuant to this paragraph when the Contractor's failure to make timely delivery or to deliver such data without deficiencies arises out of causes beyond the control and without the fault or negligence of the Contractor.

(b) After payments total ninety percent (90%) of the total contract price or amount and if all technical data specified to be delivered under this contract has not been accepted, the Contracting Officer may, withhold from further payment such sum as he considers appropriate, not exceeding ten percent (10%) of the total contract price or amount unless a lesser withholding limit is specified in the contract.

(c) The withholding of any amount or subsequent payment to the Contractor shall not be construed as a waiver of any rights accruing to the Government under this contract.

(End of clause)

(i) The following additional paragraph may be added to the clause in (a) above in accordance with 9-204.1.

( ) Publication for Sale. If, prior to publication for sale by the Government and within the period designated in the contract or task order, but in no event later than 24 months after delivery of such data, the Contractor publishes for sale any data (i) designated in the contract as being subject to this paragraph and (ii) delivered under this contract, and promptly notifies the Contracting Officer of these publications, the Government shall not publish such data for sale or authorize others to do so. This limitation on the Government's right to publish for sale any such data so published by the Contractor shall continue as long as the data is protected as a published work under the copyright law of the United States and is reasonably available to the public for purchase. Any such publication shall include a notice identifying this Contract and recognizing the license rights of the Government under paragraph (c)(1) of this clause. As to all such data not so published by the Contractor, this paragraph shall be of no force or effect.

(j) *Identification of Experimental, Developmental or Research Work.* In accordance with 9-203(d), to prevent any misinterpretation of the scope of the rights in data provisions of the contract, the following schedule provision may be included in contracts which, in whole or in part, call for experimental, developmental or research work as an element of performance.

CONTRACT SCHEDULE ITEMS REQUIRING EXPERIMENTAL, DEVELOPMENTAL OR RESEARCH WORK (1975 MAR)

For purposes of defining the nature of the work and the scope of rights in data granted to the Government pursuant to the "Rights in Technical Data and Computer Software" clause of this contract, it is understood and agreed that items *(list applicable schedule line items or sub-line items, or data exhibit numbers)* require the performance of experimental, developmental, or research work. This clause does not constitute a determination as to whether or not any data required to be delivered under this contract falls within the definition of limited rights data.

(End of provision)

(k) *Rights in Technical Data—Major Systems and Subsystems Contracts.* In accordance with 9-202.2(f)(4), the following clause may be inserted.

RIGHTS IN TECHNICAL DATA—MAJOR SYSTEM AND SUBSYSTEM CONTRACTS (1971 NOV)

The Contractor agrees that he will neither incorporate any provision in his subcontracts nor enter into any agreement, written or oral, either directly or indirectly, with subcontractors which has or may have the effect of prohibiting subcontractor sales directly to the Government of any supplies, like those manufactured or services like those furnished by such subcontractor under this contract or any follow-on production contract, or under any contract for parts or components of supplies furnished under this or any follow-on production contract. The Contractor further agrees that all data, including data in which the Government may not have unlimited rights, furnished or otherwise made available by the Contractor for use by subcontractors in furnishing such supplies or services, will be furnished to such subcontractors without payment to the Contractor of any fee, royalty or other charge by the subcontractor or the Government for use by such subcontractors in furnishing such supplies or services for sale directly to the Government. For the purpose of this paragraph, the term "fee, royalty or other charge" shall not include within its meaning fees, royalties or charges for reasonable returns on use of patents.

(End of clause)

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(l) *Identification of Technical Data.* In accordance with 9-503, insert the following clause.

IDENTIFICATION OF TECHNICAL DATA (1975 MAR)

Technical Data (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) delivered under this contract shall be marked with the number of this contract, name of Contractor, and name of any subcontractor who generated the data.

(End of clause)

(m) *Deferred Ordering of Technical Data or Computer Software.* In accordance with 9-502(c), insert the following clause:

DEFERRED ORDERING OF TECHNICAL DATA OR COMPUTER SOFTWARE (1974 NOV)

In addition to technical data or computer software specified elsewhere in this contract to be delivered hereunder, the Government may, at any time during the performance of this contract or within a period of three (3) years after acceptance of all items (other than technical data or computer software) to be delivered under this contract or the termination of this contract, order any technical data or computer software (as defined in the "Rights in Technical Data and Computer Software" clause of this contract) generated in the performance of this contract or any subcontract hereunder. When such technical data or computer software is ordered, the Contractor shall be compensated for converting the data or computer software into the prescribed form, for reproduction and delivery. The obligation to deliver such technical data of a subcontractor and pertaining to an item obtained from him shall expire three (3) years after the date the Contractor accepts the last delivery of that item from that subcontractor under this contract. The Government's rights to use said data or computer software shall be pursuant to the "Rights in Technical Data and Computer Software" clause of this contract.

(End of clause)

(n) *Requirements for Data.*

(1) The following clause shall be inserted in all contracts, except as provided in (2) below:

DATA REQUIREMENTS (1972 APR)

(a) Data means recorded information, regardless of form or characteristics.

(b) The Contractor is required to deliver only the data items listed on the DD Form 1423 (Contract Data Requirements List) and data items identified in and deliverable under any contract clause of Section VII of the Armed Services Procurement Regulation (ASPR) made a part of the contract.

(End of clause)

(2) The clause in (1) above need not be included in:

(i) any contract, of which the aggregate amount involved does not exceed $10,000 and in any blanket purchase agreement and purchase order utilizing the DD Form 1155; (However, the DD Form 1423 shall be used with orders issued under a basic ordering agreement.);

(ii) any contract awarded to a contractor outside the United States, except those under 6-501;

(iii) any research or exploratory development contract when reports are the only deliverable item(s) under the contract;

(iv) any service type contract, when the Contracting Officer determines that the use of the DD Form 1423 (Contract Data Requirements List) is impractical for use with respect to records prepared by a contractor in performing operation and maintenance under the contract;

(v) any contract under which construction and architectural drawings and specifications are the only deliverable items;

(vi) any contract for commercial items when the only deliverable data is such an item, or would be packaged or furnished with such items in accordance with customary trade practices; or

(vii) any contract for items containing material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life and property, when the only deliverable data is the Material Safety Data Sheet (MSDS) submitted in compliance with Federal Standard 313A and the clause in 7-104.98, and when such clause is included in the contract.

(o) *Technical Data Warranty*.

(1) In accordance with 1-324.6, the following clause may be inserted.

WARRANTY OF TECHNICAL DATA (1974 NOV)

(a) Technical data means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(b) Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract and notwithstanding any provision of this contract concerning the conclusiveness thereof, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three (3) years after completion of the delivery of the line item of data (as identified in DD Form 1423) of which the data forms a part; or any longer period specified in the contract.

(c) The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) The following remedies shall apply to all breaches of the above warranty *provided* that the Government notifies the Contractor of the breach in writing within the warranty period.

(1) Within a reasonable time after the Contracting Officer notifies the Contractor of a breach of warranty, he may:

(i) by written notice, direct the Contractor to correct or replace at his expense the nonconforming technical data promptly; or

(ii) if he determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment in lieu of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under (1) (i) above, the Contracting Officer may, within a reasonable time of such refusal or failure:

(i) by contract or otherwise, correct or replace the nonconforming technical data and charge the Contractor the cost occasioned to the Government thereby; or

(ii) elect a price or fee adjustment in lieu of correction or replacement.

(e) The remedies set forth in this clause represent the exclusive means by which the rights conferred on the Government by this clause may be enforced.

(f) The provisions of this clause apply anew to that portion of any technical data which is corrected or furnished in replacement under (d)(1)(i) above.

(End of clause)

(2) In accordance with 1-324.6(b), the following provision may be inserted in firm fixed-price contracts as paragraph (d)(3) of the Warranty of Technical Data clause set forth above.

(3) In addition to the remedies specified under (1) and (2) above, the Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 10% of the total contract price. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. The additional liability specified in this paragraph (3) shall not apply:

- (i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or
- (ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(3) In accordance with 1-324.6(b), the following provision may be inserted in fixed-price-incentive contracts as paragraph (d)(3) of the Warranty of Technical Data clause in 7-104.9(o).

(3) In addition to the remedies specified under (d)(1) and (2) above, Contractor shall be liable to the Government for all damages sustained by the Government as a result of breach of the warranty specified in this clause; however, the additional liability under this subparagraph (3) shall not exceed 75% of the target profit. If the breach of the warranty specified in (b) of this clause is with respect to data supplied by an equipment subcontractor, the limit of the prime contractor's liability shall be 10% of the total subcontract price in the case of a firm fixed-price subcontract, 75% of the total subcontract fee in the case of a cost-plus-fixed-fee or cost-plus-award-fee subcontract, or 75% of the total subcontract target profit or fee in the case of a fixed-price or cost-plus-incentive-type contract. Damages due the Government under the provisions of this warranty shall not be considered as an allowable cost. The additional liability specified in this paragraph (3) shall not apply:

- (i) with respect to the requirement under Category E or I of MIL-D-1000, *provided* that the data furnished by the Contractor was current, accurate at time of submission and did not involve a significant omission of data necessary to comply with such requirements; or
- (ii) with respect to specific defects as to which the Contractor discovers and gives written notice to the Government before the error is discovered by the Government.

(p) *Restrictive Markings on Technical Data.* In accordance with 9-202.3(c)(2), insert the following clause.

RESTRICTIVE MARKINGS ON TECHNICAL DATA (1975 MAR)

(a) The Contractor shall have, maintain, and follow throughout the performance of this contract, procedures sufficient to assure that restrictive markings are used on technical data required to be delivered hereunder only when authorized by the terms of the "Rights in Technical Data and Computer Software" clause of this contract. Such procedures shall be in writing. The Contractor shall also maintain a quality assurance system to assure compliance with this clause.

(b) As part of the procedures, the Contractor shall maintain (1) records to show how the procedures of (a) above were applied in determining that the markings are authorized, as well as (2) such records as are reasonably necessary to show pursuant to (d)(ii) of the "Rights in Technical Data and Computer Software" clause that restrictive markings used in any piece of technical data delivered under this contract are authorized.

(c) The Contractor shall, within sixty (60) days after award of this contract, identify in writing to the Contracting Officer by name or title the person(s) having the final responsibility within Contractor's organization for determining whether restrictive markings are to be placed on technical data to be delivered under this contract. The Contractor hereby authorizes direct contact between the Government and such person(s) in resolving questions involving restrictive markings.

(d) The Contracting Officer may evaluate or verify the Contractor's procedures to determine their effectiveness. Upon request, a copy of such written procedures shall be furnished. The failure of the Contracting Officer to evaluate or verify such procedures shall not relieve the Contractor of the responsibility for complying with (a) and (b) above.

(e)(1) If the Contractor fails to make a good faith effort to institute the procedures of (a) and (b) above, any limited rights markings on technical data delivered under this contract may be canceled or ignored by the Contracting Officer. The Contracting Officer shall give written notice to the Contractor of the action taken, including identification of the data on which markings have been canceled or ignored, and thereafter may use such data with unlimited rights.

(2) The Contracting Officer may give written notification to the Contractor of any failure to maintain or follow the established procedures, or of any material deficiency in the procedures, and state a period of time not less than thirty (30) days within which the Contractor shall complete corrective action. If corrective action is not completed within the specified time, restrictive markings on any technical data being prepared for delivery or delivered under this contract during that period shall be presumed to be unauthorized by the terms thereof and the Contracting Officer may cancel or ignore such markings if the Contractor is unable to substantiate the markings in accordance with the procedures of paragraph (d) of the "Rights in Technical Data and Computer Software" clause.

(f) Notwithstanding any provisions of this contract concerning inspection and acceptance, the acceptance by the Government of technical data with restrictive legends shall not be construed as a waiver of any rights accruing to the Government.

(g) This clause, including this paragraph (g), shall be included in each subcontract under which technical data is required to be delivered. When so inserted, "Contractor" shall be changed to "Subcontractor".

(End of clause)

7-104.10 *Ground and Flight Risk*. In accordance with 10-404, insert the following clause.

GROUND AND FLIGHT RISK (1975 OCT)

(a) Notwithstanding any other provisions of this contract, except as may be specifically provided in the Schedule as an exception to this clause, the Government, subject to the definitions and limitations of this clause, assumes the risk of damage to, or loss or destruction of, aircraft "in the open", during "operation", and in "flight", as these terms are defined below, and agrees that the Contractor shall not be liable to the Government for any such damage, loss, or destruction, the risk of which is so assumed by the Government.

(b) For the purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means—

(A) aircraft (including (I) complete aircraft, and (II) aircarft in the course of being manufactured, disassembled, or reassembled; *provided*, that an engine or a portion of a wing or a wing is attached to a fuselage of such aircraft) to be furnished to the Government under this contract (whether before or after acceptance by the Government); and

(B) aircraft (regardless of whether in a state of disassembly or reassembly) furnished by the Government to the Contractor under this contract;

including all property installed therein, or in the process of installation, or temporarily removed from such aircraft; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "in the open" means located wholly outside of buildings on the Contractor's premises or at such other places as may be described in the Schedule as being in the open for the purposes of this clause, except that aircraft furnished by the Government shall be deemed to be in the open at all times while in Contractor's possession, care, custody, or control.

(iii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the ....* With respect to land based aircraft "flight" shall commence with the taxi roll from a flight line on the Contractor's premises, and continue until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises; with respect to seaplanes, "flight" shall commence with the launching from a ramp on the Contractor's premises and continue until the aircraft has completed its landing run upon return and is beached at a ramp on the Contractor's premises; with respect to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continue until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged; and with respect to vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device on the Contractor's premises and continue until the aircraft has been re-engaged to any launching platform or device on the Contractor's premises, *provided*, however, that aircraft off the Contractor's premises shall be deemed to be in flight when on the ground or water only during periods of reasonable duration following emergency landing, other landings made in the performance of this contract, or landings approved by.............................* in writing.

(iv) The term "Contractor's premises" means those premises designated as such in the Schedule or in writing by the ....,* and any other place to which aircraft are moved for the purpose of safeguarding the Aircraft.

(v) The term "operation" means operations and tests, other than on any production line, of aircraft, when not in flight, whether or not the aircraft is in the open or in motion during the making of any such operations or tests, and includes operations and tests of equipment, accessories, and power plants, only when installed in aircraft.

(vi) The term "flight crew members" means the pilot, the co-pilot and unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defensive systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) (1) The Government's assumption of risk under this clause, as to aircraft in the open, shall continue in effect unless terminated pursuant to subparagraph (3) below. Where the.............................* finds that any of such aircraft is in the open under unreasonable conditions, he shall notify the Contractor in writing of the conditions he finds to be unreasonable and require the Contractor to correct such conditions within a reasonable time.

(2) Upon receipt of such notice, the contractor shall act promptly to correct such conditions, regardless of whether he agrees that such conditions are in fact unreasonable. To the extent that the Contracting Officer may later determine that such conditions were not in fact unreasonable, an equitable adjustment shall be made in the contract price to compensate the Contractor for any additional costs he incurred in correcting such conditions and the contract shall be modified in writing accordingly. Any dispute as to the unreasonableness of such conditions or the equitable adjustment shall be deemed to be a dispute concerning a question of the fact within the meaning of the clause of this contract entitled "Disputes."

(3) If the.............................* finds that the Contractor failed to act promptly to correct such conditions or has failed to correct such conditions within a reasonable time, he may terminate the Government's assumption of risk under this clause, as to any of the aircraft which is in the open under such conditions, such termination to be effective at 12:01 A.M. on the fifteenth day following the day of receipt by the Contractor of written notice thereof. If the Contracting Officer later determines that the Contractor acted promptly to correct such conditions or that the time taken by the Contractor was not in fact unreasonable, an equitable adjustment shall, notwithstanding paragraph (g) of this clause, be made in the contract price to compensate the Contractor for any additional costs he incurred as a result of termination of the Government's assumption of risk

under this clause and the contract shall be modified in writing accordingly. Any dispute as to whether the Contractor failed to act promptly to correct such conditions, or as to the reasonableness of the time for correction of such conditions, or as to such equitable adjustment, shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(4) In the event the Government's assumption of risk under this clause is terminated in accordance with (3) above, the risk of loss with respect to Government-furnished property shall be determined in accordance with the clause of this contract, if any, entitled "Government Property" until the Government's assumption of risk is reinstated in accordance with (5) below.

(5) When unreasonable conditions have been corrected, the Contractor shall promptly notify the Government thereof. The Government may elect to again assume the risks and relieve the Contractor of liabilities as provided in this clause, or not, and the ....* shall notify the Contractor of the Government's election. If, after correction of the unreasonable conditions the Government elects to again assume such risks and relieve the Contractor of such liabilities, the Contractor shall be entitled to an equitable adjustment in the contract price for costs of insurance, if any, extending from the end of the third working day after the Contractor notifies the Government of such correction until the Government notifies the Contractor of such election. If the Government elects not to again assume such risks, and such conditions have in fact been corrected, the Contractor shall be entitled to an equitable adjustment for costs of insurance, if any, extending after such third working day.

(d) The Government's assumption of risk shall not extend to damage to, or loss or destruction of, such aircraft:

(i) resulting from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open, and during operation, in accordance with sound industrial practice (the term "Contractor's managerial personnel" means the Contractor's directors, officers, and any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant or separate location at which this contract is performed, or a separate and complete major industrial operation in connection with the performance of this contract);

(ii) sustained during flight if the flight crew members conducting such flight have not been approved in writing by the.........................*;

(iii) while in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, except for Government-furnished property;

(iv) to the extent that such damage, loss or destruction is in fact covered by insurance;

(v) consisting of wear and tear, deterioration (including rust and corrosion), freezing, or mechanical, structural, or electrical breakdown or failure, unless such damage is the result of other loss, damage, or destruction covered by this clause; *provided*, however, in the case of Government-furnished property, if such damage consists of reasonable wear and tear or deterioration, or results from inherent vice in such property, this exclusion shall not apply; or

(vi) sustained while the aircraft is being worked upon and directly resulting therefrom, including but not limited to any repairing, adjusting, servicing or maintenance operation, unless such damage, loss, or destruction, is of a type which would be covered by insurance which would customarily have been maintained by the Contractor at the time of such damage, loss, or destruction, but for the Government's assumption of risk under this clause.

(e) With the exception of damage to, or loss or destruction of aircraft in "flight", the Government's assumption of risk under this clause shall not extend to the first $1,000 of loss or damage resulting from each event separately occurring. The Contractor assumes the risk of and shall be responsible for the first $1,000 of loss of or damage to aircraft "in the open" or during "operation" resulting from each event separately occurring, except for reasonable wear and tear and except to the extent the loss or damage is caused by negligence of Government personnel. If the Government elects to require that the aircraft be replaced or restored by the contractor to the condition in which it was immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (i) below shall not include the dollar amount of the risk assumed by the Contractor under this paragraph. In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government $1,000 (or the amount of the loss if smaller) as directed by the Contracting Officer.

(f) A subcontractor shall not be relieved from liability for damage to, or loss or destruction of, aircraft while in his possession or control, except to the extent that the subcontract, with the prior written approval of the Contracting Officer, provides for relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of such aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract. Where a subcontractor has not been relieved from liability for any damage, loss, or destruction of aircraft and any damage, loss, or destruction occurs, the Contractor shall enforce the liability of the subcontractor for such damage to, or loss or destruction of, the aircraft for the benefit of the Government.

(g) The Contractor warrants that the contract price does not and will not include, except as may be otherwise authorized in this clause, any charge or contingency reserve for insurance (including self-insurance funds or reserves) covering any damage to, or loss or destruction of, aircraft while in the open, during operation, or in flight, the risk of which has been assumed by the Government under the provisions of this clause, whether or not such assumption may be terminated as to aircraft in the open.

(h) In the event of damage to, or loss or destruction of, aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect such aircraft from further damage, separate damaged and undamaged aircraft, put all aircraft in the best possible order and further, except in cases covered by (e) above, the Contractor should furnish to the...............* a statement of:

(i) the damaged, lost, or destroyed aircraft;
(ii) the time and origin of the damage, loss or destruction;
(iii) all known interests in commingled property of which aircraft are a part; and
(iv) the insurance, if any, covering any part of the interest in such commingled property.

Except in cases covered by (e) above, an equitable adjustment shall be made in the amount due under this contract for expenditures made by the Contractor in performing his obligations under this paragraph (h) and this contract shall be modified in writing accordingly.

(i) If prior to delivery and acceptance by the Government any aircraft is damaged, lost, or destroyed and the Government has under this clause assumed the risk of such damage, loss or destruction, the Government shall either (1) require that such aircraft be replaced or restored by the Contractor to the condition in which it was immediately prior to such damage, or (2) shall terminate this contract with respect to such aircraft. In the event that the Government requires that the aircraft be replaced or restored, an equitable adjustment shall be made in the amount due under this contract and in the time required for its performance, and this contract shall be modified in writing accordingly. If, in the alternative, this contract is terminated under this paragraph with respect to such aircraft and under this clause the Government has assumed the risk of such damage, loss, or destruction, the Contractor shall be paid the contract price for said aircraft (or, if applicable, any work to be performed on said aircraft) less such amounts as the Contracting Officer determines (1) that it would have cost the Contractor to complete the aircraft (or any work to be performed on said aircraft) together with anticipated profit, if any, on any such uncompleted work, and (2) to be the value, if any, of the damaged aircraft or any remaining portion thereof retained by the Contractor. The Contracting Officer shall have the right to prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any remaining parts thereof; and, if any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due to the Contractor. Failure of the parties to agree upon an equitable adjustment or upon the amount to be paid in the event of termination of the contract with respect to any aircraft, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(j) In the event the Contractor is at any time reimbursed or compensated by any third person for any damage, loss, or destruction of any aircraft, the risk of which has been assumed by the Government under the provisions of this clause and for which the Contractor has been compensated by the Government, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such damage, loss, or destruction and, upon the request of the ....,* shall at the Government's expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation in favor of the Government) in obtaining recovery.

(End of clause)

*In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 9 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

7-104.11 *Excess Profit.*

(a) Pursuant to 10 U.S.C. 2382 and 7300 and except as provided in (b) and (c) below, any contract in an amount which exceeds or may exceed $10,000, known to be for the construction or manufacture of all or part of any complete aircraft or naval vessel, shall contain the following clause, except that the words "if this contract is in an amount which exceeds $10,000" may be inserted at the beginning of the clause in formally advertised contracts:

EXCESS PROFIT (1957 JUN)

The Contractor agrees that, unless otherwise provided by law, this contract shall be subject to all the provisions of 10 U.S.C. 2382 and 7300 and shall be deemed to contain all the agreements required by those sections; *provided* however, that this clause shall not be construed to enlarge or extend by contract the obligations imposed by those sections. The Contractor agrees to insert in the subcontracts specified in those sections either the provisions of this clause or the provisions required by those sections.

(End of clause)

(b) In any contract where only certain items or lots totaling more than $10,000 are subject to 10 U.S.C. 2382 or 7300, the foregoing clause should be modified to make the agreement of the contractor applicable only to such items or lots. In any contract where only certain items or lots totaling $10,000 or less would otherwise be subject to 10 U.S.C. 2382 or 7300, the foregoing clause should not be included in the contract even though the total amount of the entire contract exceeds $10,000.

(c) In any contract, otherwise subject to 10 U.S.C. 2382 or 7300, for scientific equipment used for communication, target detection, navigation or fire control, as designated by the Secretary, the clause prescribed in (a) above shall not be included, and the following clause shall be inserted in lieu thereof:

EXCESS PROFIT (1957 JUN)

The Secretary having designated the supplies called for by this contract to be scientific equipment used for communication, target detection, navigation, or fire control, the provisions of 10 U.S.C. 2382 and 7300 are not applicable to this contract.

(End of clause)

7-104.12 *Military Security Requirements*. Insert the following clause in all classified contracts (see 1-201.34). If the situation warrants because of the nature of the item, or the location or the conditions under which the contract is to be performed, such contract shall include a separate provision for such additional security safeguards as may be required (see paragraphs 1-103, 1-108, 1-115, and 1-116, ISR). When the Military Security Requirements clause is inserted in any contract, the contracting officer or his authorized representative shall approve and transmit a Contract Security Classification Specification (DD Form 254) in accordance with 16-811 and Section VII, DoD 5220.22-R. The DD Form 254 is required in connection with all classified subcontracts unless excepted by DoD 5220.22-R.

MILITARY SECURITY REQUIREMENTS (1971 APR)

(a) The provisions of this clause shall apply to the extent that this contract involves access to information classified ""Confidential," "Secret" or "Top Secret."

(b) The Contractor shall comply with (i) the Security Agreement (DD Form 441), including the attached Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M); and (ii) any revisions thereto, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

(d) The Contractor agrees to insert in all subcontracts hereunder which involve access to classified information provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause.

(End of clause)

7-104.13 *Preference for Certain Domestic Commodities*. The following clause shall be included in all contracts for the acquisition of food, clothing and textiles as identified.

PREFERENCE FOR CERTAIN DOMESTIC COMMODITIES (1980 OCT)

The Contractor agrees that there will be delivered under this contract only such articles of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) as have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico; *Provided*, That (i) this clause shall have no effect to the extent that the Secretary has determined that a satisfactory quality and sufficient quantitity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) nothing herein shall preclude the delivery, under this contract, of foods which have been manufactured or processed in the United States, its possessions, or Puerto Rico; and (iii) this clause shall not apply to chemical warfare protective clothing produced in qualifying countries (see Section VI).

(End of clause)

7-104.14 *Utilization of Small Business and Small Disadvantaged Business Concerns.*

(a) In accordance with 1-707.3(a), insert the following clause.

UTILIZATION OF SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1980 AUG)

(a) It is the policy of the United States that small business and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals," hereafter referred to as disadvantaged business, shall mean a small business concern -

(1) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan, and other minorities, or any individuals found to be disadvantaged by the Administration pursuant to Section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(End of clause)

(b) In accordance with 1-707.3(b), insert the following clause in negotiated contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (NEGOTIATED) (1980 AUG)

(a) This provision does not apply to small business concerns.

(b) The apparent successful offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns and which shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the contracting officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract. As a minimum, the subcontracting plan shall include—

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. For the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business concerns.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the offeror who will administer the subcontracting plan of the offeror and a description of the duties of such individual;

(3) A description of the efforts the offeror will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the offeror will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States and will require all subcontractors (except small business concerns) who receive subcontracts in excess of $500,000 or, in the case of a contract for the construction of any public facility, $1 million, to adopt a plan in consonance with this clause;

(5) Assurances that the offeror will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent

of compliance by the offeror with the subcontracting plan; and

(6) A recitation of the types of records the offeror will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses to receive the subcontract award.

d. Records to support such efforts as:
- (i) contacts with disadvantaged and small business trade associations;
- (ii) contacts with business development organizations; and
- (iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:
- (i) workshops, seminars, training programs, etc.; and
- (ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of this effort through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel regarding the support of small and small disadvantaged business firms.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The offeror understands that:

(1) An acceptable plan must, in the determination of the contracting officer, provide the maximum practicable opportunity for small business and small disadvantaged business concerns to participate in the performance of the contract.

(2) The Contracting Officer shall notify the Contractor in writing of his reasons for determining a subcontracting plan to be unacceptable. Such notice shall be given early enough in the negotiation process to allow the Contractor sufficient time to modify the plan within the time limits prescribed.

(3) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(4) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business and Small Disadvantaged Business

Concerns or (ii) an approved plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Negotiated) provision, will be a material breach of such contract or subcontract.

(f) In the acquisition of commercial products, the offeror further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's commercial production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the Contracting Officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(c) In accordance with 1-707.3(c), insert the following clause in formally advertised contracts.

SUBCONTRACTING PLAN FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FORMALLY ADVERTISED) (1980 AUG)

(a) This provision does not apply to small business concerns.

(b) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan which addresses separately subcontracting with small business concerns and small disadvantaged business concerns, and which shall be included in and made a material part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract. As a minimum, the subcontracting plan shall include:

(1) Separate percentage goals (expressed in terms of percentage of total planned subcontracting dollars) for the utilization as subcontractors of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals; for the purposes of the subcontracting plan, the Contractor shall include all subcontracts to be awarded for the specific purpose of performing this contract and may include a proportionate share of supplies and services whose costs are normally allocated as indirect or overhead costs when reasonably determined to be attributable to this contract.

a. A statement of: (i) total dollars planned to be subcontracted; (ii) total dollars planned to be subcontracted to small business; and (iii) total dollars planned to be subcontracted to small disadvantaged business.

b. A description of the principal supply and service areas to be subcontracted and an identification of those areas where it is planned to use (i) small business subcontractors, and (ii) small disadvantaged business subcontractors.

c. A statement of the method used in developing proposed subcontracting goals for small business and small disadvantaged business concerns.

d. If the offeror includes indirect and overhead costs as an element in establishing the goals in the subcontracting plan, the method used in determining the proportionate share of indirect and overhead costs incurred with (i) small business, and (ii) small disadvantaged business subcontractors shall be explained.

e. A statement of the method used for solicitation purposes (e.g., did the offeror use company source lists, the small business and disadvantaged small business source identification system provided by the Small Business Administration's Procurement Automated Source System, the National Minority Purchasing Council Vendor Information Service, or the services provided by the U.S. Department of Commerce Minority Business Development Agency's Research and Information Division, and the facilities of small business and disadvantaged business trade associations?).

(2) The name of an individual within the employ of the bidder who will administer the subcontracting plan of the bidder and a description of the duties of such individual;

(3) A description of the efforts the bidder will make to assure that small business and small disadvantaged business concerns will have an equitable opportunity to compete for subcontracts;

(4) Assurances that the bidder will include the clause entitled Utilization of Small Business and Small Disadvantaged Business Concerns in all subcontracts which offer further subcontracting possibilities in the United States, and that the bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1 million in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan in consonance with this clause;

(5) Assurances that the bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the contracting agency or the Small Business Administration in order to determine the extent of compliance by the bidder with the subcontracting plan; and

(6) A recitation of the types of records the successful bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in the plan, including the establishment of source lists of small business concerns and small disadvantaged business concerns; and efforts to identify and award subcontracts to such small business concerns. The records shall include at least the following (these records may be maintained on a plant-wide or company-wide basis unless otherwise indicated):

a. Small and disadvantaged business source lists, guides, and other data identifying small and small disadvantaged business vendors.

b. Organizations contacted for small and disadvantaged business sources.

c. On a contract-by-contract basis, records on all subcontract solicitations over $100,000, indicating on each solicitation (i) whether small business was solicited and if not, why not; (ii) whether small disadvantaged business was solicited and if not, why not; and (iii) reasons for the failure of responding small businesses or small disadvantaged businesses to receive the subcontract award.

d. Records to support such efforts as:

(i) contacts with disadvantaged and small business trade associations;
(ii) contacts with business development organizations; and
(iii) attendance at small and disadvantaged business procurement conferences and trade fairs.

e. Records to support internal activities to guide and encourage buyers such as:

(i) workshops, seminars, training programs, etc., and
(ii) monitoring activities to evaluate compliance.

f. On a contract-by-contract basis, records to support award data submitted to the Government to include name, address, and size status of subcontractor.

(c) In order to effectively implement this plan, the Contractor shall:

(1) Issue and promulgate company-wide policy statements in support of this effort, develop written procedures and work instructions, and assign specific responsibilities regarding the requirements of this clause.

(2) Demonstrate continuing management interest and involvement in support of these programs through such actions as regular reviews of progress and establishment of overall corporate and divisional goals and objectives.

(3) Train and motivate contractor personnel in support of these programs.

(4) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation

by such concerns. Where the Contractor's lists of potential small business and disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(5) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(6) Counsel and discuss subcontracting opportunities with representatives of small and disadvantaged business firms as are referred by the Small and Disadvantaged Business Utilization Specialist responsible for monitoring performance under this program and representatives of the SBA.

(d) The Contractor shall submit DD Form 1140-1 in accordance with instructions provided on the form.

(e) The bidder understands that:

(1) Prior compliance of the bidder with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the bidder for award of the contract.

(2) The failure of any contractor or subcontractor to comply in good faith with (i) the clause entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, or (ii) the terms of any subcontracting plan required by this Small Business and Small Disadvantaged Business Subcontracting Plan (Advertised) provision, will be a material breach of the contract or subcontract.

(f) In the acquisition of commercial products, the bidder further understands that:

(1) If a commercial product (defined below) is offered, the required subcontracting plan may cover the company's production generally, both for Government contracts and for regular commercial sales, rather than just this acquisition. In such cases, the Contractor may request approval from the contracting officer to submit one company-wide, or division-wide, annual plan. If such request is deemed appropriate, the offeror shall submit a proposed company-wide, or division-wide, annual plan for acceptance.

(2) Upon approval by the Contracting Officer, the plan will remain in effect for the company's entire fiscal year. During this period, Government contracts for commercial products of the affected company or division will not be required to contain individual subcontracting plans relating only to the supply or services being acquired, unless the Contracting Officer determines for a particular contract that there are unforeseen possibilities for small business and small disadvantaged business subcontracting.

(3) At least 60 days before the scheduled termination of the company or division-wide plan, the Contractor may submit to the Contracting Officer a proposed company or division-wide subcontracting plan for its commercial products for the succeeding fiscal year. If the plan would otherwise terminate prior to approval of the succeeding fiscal year's plan, it will remain in effect until the succeeding plan is accepted or rejected, but no longer than 60 days after the end of the company's fiscal year.

(4) For the purpose of this program, the term "commercial product" means a product in regular production sold in substantial quantities to the general public and/or industry at established catalog or market prices. A product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product may be regarded for the purpose of this clause as a commercial product.

(End of clause)

(d) The following clause is an example for use in negotiated contracts in accordance with 1-707.3(e).

INCENTIVE SUBCONTRACTING PROGRAM FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS (1979 JULY)

(1) The contractor has established, in his subcontracting plan, the following goals for awards to small business and small disadvantaged business concerns:

(i) ____________ percent of the total planned subcontract amount of $ __________ to small business concerns, and

(ii) ____________ percent of the total planned subcontract amount of $ __________ to small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) In recognition of any extraordinary efforts by the contractor in exceeding the small business and small dis-

advantaged business concerns subcontracting goals established by (1) above, the contracting officer may, at his election and in his sole discretion, pay an award fee to the contractor of not to exceed __*__ of the total dollar value of all such subcontract awards in excess of each goal in (1) above. The contracting officer may determine that such excess was not due to efforts by the contractor, i.e., subcontractor cost overruns, or where the actual subcontract amount exceeds that estimated in the subcontract plan; or there were planned subcontracts not disclosed in the subcontract plan during contract negotiation. Determinations under this paragraph shall not be subject to the clause hereof entitled Disputes.

(3) If the contract is a cost-plus-fixed-fee type, the total of the fixed fee and the incentive payments made pursuant to this clause is subject to the limitations set forth in DAR 3-405.6(c)(2).

*Exact percentage (not to exceed 10 percent) to be inserted into the contract document.

(End of Clause)

7-104.15 *Examination of Records by Comptroller General.* Insert the following clause in all contracts except contracts for public utility services at rates not in excess of those established for uniform applicability to the general public, or at such rates plus reasonable connection charges incident to such services, or unless exempted under 6-704 or 6-1001.

EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (1975 JUN)

(a) This clause is applicable if the amount of this contract exceeds $10,000 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract or such lesser time specified in either Appendix M of the Armed Services Procurement Regulation or the Federal Procurement Regulations Part 1-20, as appropriate, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $10,000 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above for records which relate to (i) appeals under the "Disputes" clause of this contract, (ii) litigation or the settlement of claims arising out of the performance of this contract, or (iii) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation, claims or exceptions have been disposed of.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-104.16 *Gratuities*. Insert the following clause in all fixed-price supply contracts and purchase orders, except contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

GRATUITIES (1952 MAR)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; *provided*, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

7-104.17 *Convict Labor*. In accordance with Section XII, Part 2, insert the following clause.

CONVICT LABOR (1975 OCT)

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973.

(End of clause)

7-104.18 *Priorities, Allocations, and Allotments*. In accordance with 1-307.2, insert the following clause.

PRIORITIES, ALLOCATIONS, AND ALLOTMENTS (1975 OCT)

The Contractor shall follow the provisions of DMS Reg. 1 or DPS Reg. 1 and all other applicable regulations and orders of the Bureau of Domestic Commerce in obtaining controlled materials and other products and materials needed to fill this order.

(End of clause)

7-104.19 *Employment of Ocean-Going Vessels—Ocean Transport of Government-Owned Supplies*.

(a) In accordance with 1-1404(a), insert a clause substantially as follows:

OCEAN TRANSPORT OF GOVERNMENT-OWNED SUPPLIES (1963 NOV)

The Contractor shall advise the Contracting Officer of any proposed transportation by ocean vessels of Government-owned property in the possession of the Contractor or his subcontractors (including property under which title will pass to the Government prior to such transportation). Such property shall subsequently be transported only on United States-flag vessels as directed by the Contracting Officer

(End of clause)

(b) In accordance with 1-1404(b)(1), insert the following clause.

EMPLOYMENT OF OCEAN-GOING VESSELS (1979 MAR)

If ocean transportation is required after the date of award of this contract in delivering any of the supplies to be furnished hereunder, the Contractor, promptly after each shipment, shall furnish to the Contracting Officer one copy of the applicable ocean shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (40 cubic feet) of dry cargo, or long tons (2,240 pounds) of bulk liquid cargo, shipped on such vessel; *provided*, that the Contractor need not furnish such a document for any shipment of less than 120 measurement tons of dry cargo or less than 35 long tons of bulk liquid cargo, *provided further*, if this contract is an indefinite quantity contract or a requirements contract, the Contractor need furnish such documents only in connection with shipments made after the date of any delivery order requiring ocean transportation in delivering supplies thereunder. One copy of the applicable shipping document shall also be sent to the U.S. Maritime Administration, Division of National Cargo, 14th and E Streets, N.W., Washington, D.C. 20230.

(End of clause)

(c) In accordance with 1-1404(b)(2), insert the following clause.

PREFERENCE FOR UNITED STATES-FLAG VESSELS (1979 MAR)

(a) After the date of award of this contract, the Contractor shall employ privately owned United States-flag commercial vessels, and no others, in the transportation by sea of any supplies to be furnished hereunder; *provided*, however, that if such vessels are not available for timely shipment at fair and reasonable rates for such vessels, the Contractor shall so notify the Contracting Officer and request authorization to ship in foreign-flag vessels or designation of available United States-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship such supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping such supplies on privately owned United States-flag commercial vessels and foreign-flag vessels.

(b) Promptly after each shipment the Contractor shall furnish the Contracting Officer one copy of the applicable shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (40 cubic feet) of dry cargo, or long tons (2,240 pounds) of bulk liquid cargo shipped on such vessels. One copy of the applicable shipping document shall also be sent to the U.S. Maritime Administration, Division of National Cargo, 14th and E Streets, N.W., Washington, D.C. 20230.

(End of clause)

(d) *Reserved*.

7-104.20 *Utilization of Labor Surplus Area Concerns.*

(a) In accordance with 1-805.3(a), insert the following clause.

UTILIZATION OF LABOR SURPLUS AREA CONCERNS (1978 JUN)

(a) It is the policy of the Government to award contracts to labor surplus area concerns which have agreed to perform substantially in labor surplus areas, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business and Small Disadvantaged Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) labor surplus area concerns which are also small business concerns, (ii) other small business concerns, and (iii) other labor surplus area concerns.

(End of clause)

(b) In accordance with 1-805.3(b), insert the following clause.

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (1978 JUN)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Labor Surplus Area Concerns" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the "Utilization of Labor Surplus Area Concerns" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) For subcontracting purposes, a "labor surplus area concern" is a concern that has agreed to perform substantially in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production in such areas amount to more than 50% of the price of such contract.

(c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of $500,000 and which contains the clause entitled "Utilization of Labor Surplus Area Concerns" that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

(End of clause)

7–104.21 *Limitation on Withholding of Payments.*

(a) Except as provided in (b) below, the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed.

LIMITATION ON WITHHOLDING OF PAYMENTS (1958 SEP)

If more than one clause or Schedule provision of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided*, that this limitation shall not apply to—

(i) withholdings pursuant to any clause relating to wages or hours of employees;
(ii) withholdings not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or the procuring activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or
(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them is being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7–104.22 *Equal Opportunity Pre-Award Clearance of Subcontracts.* Insert the following clause in all contracts containing a "Subcontracts" clause prescribed by 23–201 (see also 23–201.4).

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

EQUAL OPPORTUNITY PRE-AWARD CLEARANCE OF SUBCONTRACTS (1971 OCT)

Notwithstanding the clause of this contract entitled "Subcontracts," the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of $1,000,000 or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(End of clause)

7-104.23 *Subcontracts.*

(a) The following clause shall be inserted in all fixed-price type contracts, in accordance with 23-201.

SUBCONTRACTS (1979 MAR)

(The provisions of this clause do not apply to firm fixed-price contracts and fixed price contracts with economic price adjustment provisions. However, the clause does apply to unpriced modifications under such contracts.)

(a) As used in this clause, the term "subcontract" includes but is not limited to purchase orders, changes and/or modifications thereto.

(b) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract if the Contractor's procurement system has not been approved by the Contracting Officer and if the subcontract:

- (i) is to be a cost-reimbursement, time and materials, or labor-hour contract which it is estimated will involve an amount in excess of twenty-five thousand dollars ($25,000) including any fee:
- (ii) is proposed to exceed one hundred thousand dollars ($100,000); or
- (iii) is one of a number of subcontracts, under this contract, with a single subcontractor for the same or related supplies or services which, in the aggregate, are expected to exceed one hundred thousand dollars ($100,000).

(c) The advance notification required by paragraph (b) above shall include:

- (i) a description of the supplies or services to be called for by the subcontract;
- (ii) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;
- (iii) the proposed subcontract price, together with the Contractor's cost or price analysis thereof;
- (iv) the subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificates are required by other provisions of this contract to be obtained from the subcontractor;
- (v) identification of the type of subcontract to be used;
- (vi) a memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contractor in determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the contractor and the subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the contractor's total price objective, the memorandum shall explain this difference;

(vii) when incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee profit plan identifying each critical performance element, management decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time; and

(viii) the Subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

(d) The Contractor shall not enter into any subcontract for which advance notification to the Contracting Officer is required by this clause, without the prior written consent of the Contracting Officer, *provided* that the Contracting Officer, in his discretion, may ratify in writing any subcontract. Such ratification shall constitute the consent of the Contracting Officer required by this paragraph.

(e) Neither consent by the Contracting Officer to any subcontract or any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination; (i) of the acceptability of any subcontract terms or condition, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this contract; unless such approval or consent specifically provides otherwise.

(f) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(g) The Government reserves the right to perform contractor procurement system reviews as set forth in ASPR Section XXIII.

(End of clause)

(b) Insert the following additional subparagraph to the clause in (a) above in accordance with 23-201.1(b)(iii).

(h) Notwithstanding approval of the Contractor's procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer. With respect to subcontracts so identified, the advance notification requirements of paragraph (b) above shall be fully applicable even though the Contractor's system has been approved and those subcontracts are within the scope of the approval.

7-104.24 *Government Property.*

(a) *Government Property Clause.* Except as provided in (b) through (d) and (f) below, insert the following clause when a Department is to furnish to the contractor, or the contractor is to acquire Government property.

GOVERNMENT PROPERTY (FIXED PRICE) (1968 SEP)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." Except for Government-furnished property furnished "as-is", in the event the Government-furnished property is received by the

Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property provided or to be provided by the Government under this contract, or (ii) substitute other Government-owned property for property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to subparagraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule, to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution, or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property". Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Appendix B, a program for the utilization, maintenance, repair, protection, and preservation of Government property until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs, *provided*, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by the Contracting Officer. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of Government property made at the direction of the Government, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss of or damage to Government property provided under this contract upon its delivery to him or upon passage of title thereto to the Government as provided in paragraph (c) hereof, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) *Restoration of Contractor's Premises and Abandonment.* Unless otherwise provided herein, the Government:

- (i) may abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease;
- (ii) has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j) (i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(End of clause)

(b) *Overseas Contracts.* If the contract is an overseas contract, insert the words "United States" before the words "Government" and "Government-furnished" wherever they appear in the above clause. Also, in cases where the 'Manual for Military Standard Requisitioning and Issue Procedures (MILSTRIP) for Defense Contractors' (Appendix H, Armed Services Procurement Regulation) does not apply, substitute the following paragraphs (d) and (k) for paragraphs (d) and (k) of the above clause.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract.

* * * * *

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

(c) *Negotiated Contracts.* In negotiated fixed-price contracts for which the price is not based on (i) adequate price competition, (ii) established catalog or market prices of commercial items sold in substantial quantities to the general public (see 3-807.7(b)), or (iii) prices set by law or regulation, substitute the following paragraph (g) for paragraph (g) of the clause in (a) above.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(g) *Risk of Loss.*

(1) The Contractor shall not be liable for loss or destruction of or damage to the Government property provided under this contract except as provided in (2) below. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall be responsible for any loss or damage (i) to the extent specifically provided in the clause or clauses of this contract designated in the schedule, or (ii) which results from:

(A) willful misconduct or lack of good faith of any of the Contractor's managerial personnel; or

(B) a failure on the part of the Contractor, due to willful misconduct or lack of good faith of the Contractor's managerial personnel, (i) to maintain and administer the program for maintenance, repair, protection, and preservation of the Government property as required by paragraph (f) hereof, or (ii) to establish, maintain and administer a system for control of Government property as required by paragraph (d) of this clause.

Any failure of the Contractor to act, as provided in this (B), shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of one of the Contractor's managerial personnel if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of the Contractor's managerial personnel, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

(i) all or substantially all of the Contractor's business;

(ii) all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(3) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the Government property.

(4) Upon the happening of loss or destruction of or damage to any Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) the lost, destroyed, and damaged Government property;

(ii) the time and origin of the loss, destruction, or damage;

(iii) all known interests in commingled property of which the Government property is a part; and

(iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph (4) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly), in accordance with the procedures provided for in the "Changes" clause of this contract.

(5) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to the Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

*(7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. (1978 SEP)

*This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted pursuant to 10-404 (b) (2).

(d) *Fixed-Price With Reimbursement Provision*. If the supply or services contract sets out a fixed-price for a portion of the contract but also provides for reimbursement of costs of certain materials, include the clause from (a) above, but substitute the following paragraph (c) for paragraph (c) of the clause.

> (c) *Title*. Title to all property furnished by the Government shall remain in the Government. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor for the Government pursuant to this contract shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested. Title to all material purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such material by the vendor. Title to other material, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such material in the performance of this contract, or (ii) commencement of processing or use of such material in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever occurs first. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(e) "*As Is*" *Government Property*. Insert the following clause, in addition to the clause in (a) above, when Government production and research property is furnished "as is" (see 13-308).

GOVERNMENT PROPERTY FURNISHED "AS IS" (1965 APR)

(a) The Government makes no warranty whatsoever with respect to Government property furnished "as is" except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation, or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available to him "as is". Such repair will be at the Contractor's expense except as otherwise provided in this clause. Such property may be modified at the Contractor's expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer of such fact, and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property, or (ii) effect repairs to return the property to its condition when inspected under the solicitation, or if not inspected, last available for inspection under the solicitation. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust any contractual provisions affected by the return, disposition or repair, in accordance with the procedures provided for in the "Changes" clause of this contract. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for any delivery of Government property furnished "as is" in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished "as is" shall be governed by the "Government Property" clause of this contract.

(End of clause)

(f) *Short Form Clause*. Instead of the clause in (a) above, the following short form clause may be used when:

- (i) the Government is to furnish to the contractor Government property having an acquisition cost of $50,000 or less, or
- (ii) property is furnished to a contractor for use on a Government installation and contract administration is retained by the purchasing office.

When, pursuant to the authority in 13-803, the procuring contracting officer has authorized Government personnel to maintain Government property records, the second sentence of subparagraph (b) of the clause shall be deleted in its entirety when inserting the Property Records clause in (g) below. In overseas contracts, insert the words "United States" before the words "Government furnished" in the following clause.

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM) (1964 NOV)

(a) The Government shall deliver to the Contractor, for use only in connection with this contract, the property described in the schedule or specifications (hereinafter referred to as "Government-furnished property"), at the times and locations stated therein. If the Government-furnished property, suitable for its intended use, is not so delivered to the Contractor, the Contracting Officer shall, upon timely written request made by the Contractor, and if the facts warrant such action, equitably adjust any affected provision of this contract pursuant to the procedures of the "Changes" clause hereof.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall maintain adequate property control records of Government-furnished property in accordance with sound industrial practice.

(c) Unless otherwise provided in this contract, the Contractor, upon delivery to him of any Government-furnished property, assumes the risk of, and shall be responsible for, any loss thereof or damage thereto except for reasonable wear and tear, and except to the extent that such property is consumed in the performance of this contract.

(d) The Contractor shall, upon completion of this contract, prepare for shipment, deliver f.o.b. origin, or dispose of all Government-furnished property not consumed in the performance of this contract or not theretofore delivered to the Government, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or paid in such other manner as the Contracting Officer may direct.

(End of clause)

(g) *Records of Government Property*. In accordance with 13-803, insert the following clause in addition to the clause in (a) or (f) above.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

PROPERTY RECORDS (1967 AUG)

The Government shall maintain the official contract records in connection with Government property under this contract. The "Government Property" clause is hereby modified by deleting so much thereof as requires that the Contractor maintain such records.

(End of clause)

7-104.25 ***Special Tooling*****. Insert the following clause in negotiated contracts when the Government is to acquire full rights in special tooling other than as a line item (see 13-305).**

SPECIAL TOOLING (1967 OCT)

(a) *Definition.*

(1) The term "special tooling" means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production of particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) consumable property;

(ii) special test equipment; or

(iii) buildings, nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

(2) For the purposes of this clause, the term "special tooling" does not include:

(i) items acquired by the Contractor prior to the effective date of this contract, or replacements of such items, whether or not altered or adapted for use in the performance of this contract; or

(ii) items specifically excluded by the Schedule.

(b) *Use of Special Tooling.* The Contractor agrees not to use any items of special tooling except in the performance of this contract, or as approved by the Contracting Officer.

(c) *List of Special Tooling.* Within sixty (60) days after delivery of the first production end items under this contract, or such later date as may be prescribed by the Contracting Officer, the Contractor shall if the Contracting Officer so requests, furnish the Contracting Officer a list of all special tooling acquired or manufactured by the Contractor for use in the performance of this contract. The list shall specify the nomenclature, tool number and related product part number or service, and unit or group cost of the special tooling. Upon completion or termination of all or a substantial part of the work under this contract the Contractor shall furnish a final list in the same form covering all items not previously reported under this paragraph; *provided*, however, that the Contracting Officer may by written notice waive this requirement or extend it until the completion of this contract and other contracts and subcontracts as to which approval has been obtained under paragraph (b) above. Special tooling which has become obsolete as a result of changes in design or specification need not be reported, except as provided for in paragraph (d).

(d) *Changes in Design.* In the event of any changes in design or specifications which affect interchangeability of parts, the Contractor shall, unless otherwise agreed to by the Contracting Officer, give the Contracting Officer notice of any part which is not interchangeable with the new or superseding part and the usable special tooling for each part covered in such notice shall be retained by the Contractor subject to the provisions of paragraph (i), pending disposition under paragraph (f).

(e) *Contractor's Offer to Retain Special Tooling.* At the time he furnishes any list or notice under (c) or (d) above, the Contractor may designate those items of special tooling (either specifically or by listing the particular products, parts, or services for which such items were used or designed) which he desires to retain, together with a written offer.

(i) to retain any or all of such items, free and clear of any Government interest, for an amount designated therein, which should ordinarily not be less than the then fair value of such items which fair value takes into account, among other things, the value of such items to the Contractor for use in further work by him; or

(ii) to retain any or all such items for such period of time and subject to such terms and conditions as may be agreed to by the parties hereto, subject to ultimate retention or disposition of such items in accordance with paragraph (f) hereof.

(f) *Disposition of Special Tooling.* Within ninety (90) days after receipt of any list or notice under paragraph (c) or (d) hereof, or such further period as may be agreed upon by the parties, the Contracting Officer shall furnish to the Contractor:

(i) a list specifying the particular products, parts, or services for which the Government may require special tooling together with a request that the Contractor transfer title (to the extent not previously transferred under any other clause of this contract) and deliver to the Government all usable items of special tooling which were used or designed for the manufacture or performance of any designated portion of such products, parts, or services, and which were on hand when production of such products or parts, or performance of such services, ceased;

(ii) an acceptance or rejection of any offer made by the Contractor under paragraph (e) above, or a request for further negotiation with respect thereto;

(iii) a direction to the Contractor to sell, or to dispose of as scrap, for the account of the Government, any or all of the special tooling covered by such list;

(iv) a statement with respect to any or all of the special tooling covered by such list that the Government has no further interest herein and waives its rights therein; or

(v) any combination of the foregoing, as the circumstances warrant.

The Contractor shall promptly comply with any request by the Contracting Officer under this paragraph to transfer title to any items of special tooling, and shall: (1) immediately prepare such items for shipment by proper packaging, packing, and marking, in accordance with any instructions which may be issued by the Contracting Officer, and shall promptly deliver such items to the Government as directed by the Contracting Officer; or (2) if a storage agreement has been entered into, prepare such items for storage in accordance therewith, as directed by the Contracting Officer. To the extent that compliance with such directions under (iii), (1) or (2) above occasions any cost to the Contractor for which he will not otherwise be compensated, the contract price shall be equitably adjusted in accordance with the procedures of the "Changes" clause hereof. Any items of special tooling so delivered or stored shall be accompanied by such operation sheets or other appropriate data as are necessary to show the manufacturing operations or processes for which such items were used or designed. If the Contracting Officer has requested further negotiations under (ii) of this paragraph, the Contractor agrees that he will enter into such negotiations in good faith with the Contracting Officer. Any items of special tooling which are not disposed of by transfer of title and delivery to the Government, or by acceptance of an offer of the Contractor made under paragraph (e), or of such offer as modified in the course of negotiations, shall be disposed of in the manner set forth in (iii) or (iv) of this paragraph. Any failure of the Contracting Officer to give the directions required under (i)-(v) above within the specified period shall be construed as a direction pursuant to (iii) above.

(g) *Proceeds of Retention or Disposition of Special Tooling.* If the Contracting Officer accepts an offer of the Contractor to retain any items of special tooling, or if any such items are sold to third parties or disposed of as scrap, the net proceeds shall: (i) be deducted from the amounts due to the Contractor under this contract and the contract amended accordingly; or (ii) be otherwise paid as the contracting Officer may direct.

(h) *Property Control.* The Contractor agrees that he will follow his normal industrial practice in maintaining property control records on all the special tooling, and that he will make such records available for inspection by the Government at all reasonable times. The Contractor further agrees that, to the extent practicable, he will identify by appropriate stamp, tag or other mark all special tooling subject to this clause.

(i) *Maintenance Pending Disposition.* The Contractor agrees that between the date any usable items of special tooling are no longer needed by him, within the meaning of this clause, and the date of final disposition of such items under this clause, he will take all reasonable steps necessary to maintain the identity and existing conditions of such items, unless the Contracting Officer has directed that such items be disposed of as scrap or has given notice under (f)(iv). The Contractor shall not be required to keep any such items in place.

(j) *Special Tooling Provisions for Subcontracts.* The Contractor agrees that, in placing any subcontracts or purchase orders under this contract which involve the use of special tooling, the full cost of which is charged to such subcontract or purchase order, he will include therein appropriate provisions to obtain rights comparable to those granted to the Government by this clause, unless the Contracting Officer determines, upon the Contractor's request, that, with respect to any subcontract, purchase order, or class thereof, such rights are not of substantial interest to the Government. The Contractor further agrees that he will exercise any such rights for the benefit of the Government, as the Contracting Officer may direct.

(End of clause)

7-104.26 *Special Test Equipment.* Insert the following clause in negotiated contracts which provide that the contractor will acquire or fabricate special test equipment for the Government but do not specify the items to be acquired or fabricated (see 13-306.3(c)).

SPECIAL TEST EQUIPMENT (1973 APR)

(a) Special test equipment means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment, that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "special test equipment" does not include:

- (i) material;
- (ii) special tooling;
- (iii) buildings and nonseverable structures (except, foundations and similar improvements necessary for the installation of special test equipment), or
- (iv) plant equipment items used for general plant testing purposes.

(b) Subject to prior approval by the Contracting Officer the Contractor may either acquire or fabricate at Government expense, special test equipment not otherwise itemized in the contract. The Contractor shall provide the Contracting Officer a written notice, at least thirty (30) days in advance, of his intention to acquire or fabricate such special test equipment or components. As a minimum, the following information shall be submitted by the Contractor:

- (i) For each item of special test equipment or component costing $1,000 or more:
  - (A) The end use application and function of each proposed special test unit identifying special characteristics. Reasons for the classification of the test unit as special test equipment shall be included;
  - (B) A complete description identifying the items to be acquired and the items to be fabricated by the Contractor;
  - (C) The estimated cost of the item of special test equipment or component; and
  - (D) A statement that intra-plant screening of Contractor and Government-owned special test equipment and components has been accomplished and none are available for use in the performance of this contract.
- (ii) The aggregate estimated cost of all items and components, the individual cost of which is less than $1,000.

(c) If the Government furnishes rather than approves acquisition or fabrication of special test equipment or any components thereof, such items shall be furnished subject to the Government Property clause. The Government shall not be obligated to deliver such items any sooner than the Contractor could have acquired or fabricated them after expiration of the thirty (30) day notice period prescribed in paragraph (b) above. If the Contractor has not received such written notice within the period prescribed, he may proceed to acquire such equipment or components subject to any other applicable provision of this contract.

(d) The Contractor shall, with respect to any subcontract hereunder which provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions in the subcontract which conform substantially to the language of this clause, including this paragraph (d) and furnish the names of such subcontractors to the Contracting Officer.

(e) If an engineering change requires either the acquisition or fabrication of new, or substantial modification to existing special test equipment, the Contractor shall comply with (b) above. Reference shall be made to the change order which resulted in either the proposed acquisition or fabrication of, or modification to special test equipment.

(End of clause)

7-104.27 *Options.*

(a) A clause substantially as follows may be used when the contract expresses the option quantity as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

OPTION FOR INCREASED QUANTITY

The Government may increase the quantity of supplies called for herein by the amount stated in the Schedule and at the unit price specified therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree.

(End of clause)

(b) A clause substantially as follows may be used when the contract identifies the option quantity as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

OPTION FOR INCREASED QUANTITY

The Government may increase the quantity of supplies called for herein by requiring the delivery of the numbered line item identified in the Schedule as an option item, in the quantity and at the price set forth therein. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule by giving written notice to the Contractor. Delivery of the items added by the exercise of this option shall continue immediately after, and at the same rate as, delivery of like items called for under this contract unless the parties otherwise agree.

(End of clause)

(c) A clause substantially as follows may be used when it is intended to extend the services described in the schedule.

OPTION TO EXTEND THE TERM OF THE CONTRACT

This contract is renewable, at the option of the Government, by the Contracting Officer giving written notice of renewal to the Contractor within the period specified in the schedule; *provided*, that the Contracting Officer shall have given preliminary notice of the Government's intention to renew at least sixty (60) days before this contract is to expire. (Such a preliminary notice will not be deemed to commit the Government to renewals.) If the Government exercises this option for renewal, the contract as renewed shall be deemed to include this option provision. However, the total duration of this contract, including the exercise of any options under this clause, shall not exceed........years.

(End of clause)

(d) One of the following paragraphs shall be added to the Option clause when the Government either knows or anticipates that the option may be exercised to fulfill Foreign Military Sales (FMS) requirements. These added provisions are not required nor shall they be placed into contracts for the establishment or replenishment of Department of Defense inventories or stocks, or procurements made under DoD Cooperative Logistic Support Arrangements.

(1) Insert a paragraph substantially as follows when the Government and the contractor are able to negotiate a price in advance for FMS requirements:

> The U. S. Government may exercise the option or options under this clause to fulfill Foreign Military Sales commitments undertaken by the U. S. Government on behalf of a foreign country.

(2) Insert a paragraph substantially as follows when the Government anticipates that the option may be exercised for FMS requirements and the Government and the contractor are unable to negotiate any additional cost or profit considerations attributable to FMS included in 6-1304 and 3-808.6(b)(5)*e* until a specific country or countries are subsequently identified:

> The U. S. Government may exercise the option or options under this clause to fulfill Foreign Military Sales commitments undertaken by the U. S. Government on behalf of a foreign country. At the date of exercise of the option, the U. S. Government will identify the foreign country for the purpose of negotiating an equitable price adjustment for any additional cost or profit considerations attributable to Foreign Military Sales included in 6-1304 and 3-808.6(b)(5)*e*. Failure to agree to such an equitable adjustment shall be treated as a dispute within the meaning of the clause of this contract entitled "Disputes."

7-104.28 *Quality Program.* In accordance with 14-304, insert the following clause.

QUALITY PROGRAM (1967 AUG)

The Contractor shall provide and maintain a quality program acceptable to the Government for supplies and services covered by this contract. The quality program shall be in accordance with the edition of Military Specification MIL-Q-9858 in effect on the date of this contract.

(End of clause)

7-104.29 *Price Reduction for Defective Cost or Pricing Data.*

(a) The following clause shall be inserted in negotiated contracts which when entered into exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In addition the contracting officer shall include this clause in other negotiated contracts for which he has obtained a Certificate of Current Cost or Pricing Data in accordance with 3-807.3(b)(iii) in connection with the initial pricing of the contract, or for which he has obtained partial cost or pricing data in accordance with 3-807.3(d).

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (1970 JAN)

If any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because:

(i) the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(ii) a subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(iii) a subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(iv) the Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii) or (iii) above, which was not accurate as submitted;

the price or cost shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, *provided* the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor, *provided* that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

(End of clause)

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which when entered into exceed $100,000 except those containing the clause in (a) above.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—PRICE ADJUSTMENTS (1970 JAN)

(a) This clause shall become operative only with respect to any modification of this contract which involves aggregate increases and/or decreases in costs plus applicable profits in excess of $100,000 unless the modification is priced on the basis of adequate competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause is limited to defects in data relating to such modification.

(b) If any price, including profit, or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because:

(i) the Contractor furnished cost or pricing data which was not complete, accurate and current as certified in the Contractor's Certificate of Current Cost or Pricing Data;

(ii) a subcontractor, pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments" or any subcontract clause therein required, furnished cost or pricing data which was not complete, accurate and current as certified in the subcontractor's Certificate of Current Cost or Pricing Data;

(iii) a subcontractor or prospective subcontractor furnished cost or pricing data which was required to be complete, accurate and current and to be submitted to support a subcontract cost estimate furnished by the Contractor but which was not complete, accurate and current as of the date certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(iv) the Contractor or a subcontractor or prospective subcontractor furnished any data, not within (i), (ii) or (iii) above, which was not accurate, as submitted;

the price shall be reduced accordingly and the contract shall be modified in writing as may be necessary to reflect such reduction. However, any reduction in the contract price due to defective subcontract data of a prospective subcontractor, when the subcontract was not subsequently awarded to such subcontractor, will be limited to the amount (plus applicable overhead and profit markup) by which the actual subcontract, or actual cost to the Contractor if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor, *provided* the actual subcontract price was not affected by defective cost or pricing data.

Note: Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the contractor and the subcontractor, *provided* that they are consistent with ASPR 23-203 relating to Disputes provisions in subcontracts. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

(End of clause)

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-104.30 *Humane Slaughter of Livestock.* In accordance with 4-604(c), insert the following clause.

HUMANE METHOD OF LIVESTOCK SLAUGHTER (1961 JAN)

(a) The Contractor agrees that livestock products sold to the Government, except products produced or processed from livestock slaughtered outside the United States, its possessions, or Puerto Rico, conform to the requirements of the Humane Slaughter Act of 1958 (7 U.S.C. 1901-1906).

(b) The Contractor shall have furnished the Government a Statement of Eligibility (Humane Slaughter Act) before award of this contract or issuance of this purchase order, and such statement is hereby incorporated by reference.

(End of clause)

7-104.31 *Duty-Free Entry.*

(a) *Duty-Free Entry for Designated Items.* In accordance with 6-603.3(a), insert the provision in 7-2003.49 and the following clause.

DUTY-FREE ENTRY FOR CERTAIN SPECIFIED ITEMS (1971 FEB)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry.

(b) The Contractor warrants that all such supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof, (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of supplies as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents covering those supplies that are specifically identified in the Schedule as supplies to be accorded duty-free entry, shall consign the shipments to the appropriate Military Department, in care of the particular Contractor including the Contractor's delivery address or the appropriate military installation and shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE—DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate ;"

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in United States dollars.

(e) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (d) above and mark all packages UNITED STATES DEPARTMENT OF DEFENSE to qualify for duty-free and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies identified in the schedule as supplies to be accorded duty-free entry. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the overseas supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(g) The Contractor will make appropriate provisions in subcontracts hereunder to assure that the entire substance of this clause is agreed to by each first- or lower-tier subcontractor, if any, who will import into the United States, its possessions, or Puerto Rico, supplies identified in the Schedule as supplies to be accorded duty-free entry.

(End of clause)

(b) In accordance with 6–603.3(b), insert the following clause.

NOTICE OF IMPORTS—POSSIBLE DUTY-FREE ENTRY (1971 FEB)

(a) Except as provided in paragraph (c) below, the Contractor shall notify the Contracting Officer in writing of any purchase in excess of $10,000 by the Contractor of foreign supplies (including without limitation raw materials, components, and intermediate assemblies) that are to be imported into the United States, its possessions, or Puerto Rico, for delivery to the Government, or for incorporation in end items to be delivered to the Government, under this contract; *provided*, that if this contract contains any other clause providing for duty-free entry, such notice is not required for any supplies that are to be accorded duty-free entry under any other such clause. Any such notice shall be furnished to the Contracting Officer at least twenty (20) days before the importation of any supplies pursuant to any such purchase. The notice shall identify (i) the foreign supplies, (ii) the estimated amount of duty payable thereon, and (iii) the country of origin.

(b) If, within ten (10) days of receipt of any notice under (a) above, the Contracting Officer notifies the Contractor in writing that the Government will issue duty-free entry certificates for such foreign supplies, or if the Government otherwise tenders and the Contractor agrees to the issuance of such a duty-free entry certificate, the following subparagraphs shall apply:

(1) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause.

(2) The Contractor warrants that all such foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause are intended to be delivered to the Government or incorporated in end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies or any portion thereof (if not scrap or salvage), are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer.

(3) The Government agrees to execute duty-free entry certificates and to afford appropriate assistance in order to obtain the duty-free entry of such foreign supplies as to which, pursuant to subparagraph (4) below, the shipping documents bear the notation specified therein, except as the Contractor may otherwise agree.

(4) All shipping documents submitted to Customs, covering foreign supplies for which duty-free entry certificates are to be issued in accordance with this clause shall consign the shipments to the appropriate (i) Military Department in care of the particular Contractor including the Contractor's delivery address, or (ii) the appropriate military installation and shall bear the following information:

(i) Government prime contract number;
(ii) identification of carrier;
(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE—DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, kindly release shipment under section 8.59CR and notify the appropriate DCASR for execution of Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate;"
(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
(v) estimated value in United States dollars.

(5) The Contractor agrees to instruct the foreign supplier to consign the shipment as specified in (4) above and mark all packages UNITED STATES DEPARTMENT OF DEFENSE to qualify for duty-free entry and to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(6) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of foreign supplies for which duty-free entry certificates are to be

issued in accordance with this clause. Such notice shall be furnished to the CAO immediately upon notification from the Contracting Officer that duty-free entry will be accorded the supplier. The notice shall identify (i) the foreign supplies, (ii) the country of origin, (iii) the prime contract number, and (iv) the scheduled delivery date(s).

(c) This clause shall not apply to purchases of foreign supplies in connection with this contract if (i) such foreign supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business, and (ii) segregation of such supplies to insure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor agrees to insert the substance of this clause in any first-tier subcontract hereunder in connection with which foreign supplies in excess of $10,000 may be imported by the subcontractor into the United States, its possessions, or Puerto Rico.

(End of clause)

7-104.32 *Duty-Free Entry of Qualifying Country Supplies.* The following clause shall be inserted in accordance with 6-104.5 and 6-603.3(c).

DUTY-FREE ENTRY—QUALIFYING COUNTRY END PRODUCTS AND SUPPLIES (1980 OCT)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price on account of duty with respect to—

(i) all end items which constitute "qualifying country end products" (as defined in 6-001) to be delivered under this contract; and

(ii) all supplies (including, without limitation, raw materials, components, and intermediate assemblies) produced or made in qualifying countries, which are to be incorporated in the end items to be delivered under this contract; *Provided,* That such end items are manufactured in the United States or in a qualifying country, except supplies imported into the United States prior to the date of this contract or, in the case of supplies imported by a first or lower tier subcontractor hereunder, prior to the date of his subcontract.

(b) The Contractor warrants that all such qualifying country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract and that duty shall be paid by the Contractor to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(c) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate in order to obtain the duty-free entry of qualifying country end products as to which the shipping documents bear the notation specified in paragraph (d) below, except as the Contractor may otherwise agree.

(d) All shipping documents submitted to customs, covering qualifying country end products or supplies for which duty-free entry is to be claimed, shall bear the following information:

(i) Government prime contract number;

(ii) identification of carrier;

(iii) the notation: "UNITED STATES DEPARTMENT OF DEFENSE DUTY-FREE ENTRY TO BE CLAIMED pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, kindly release the shipments under 8.59CP and notify Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013, who will execute Customs Forms 7501 and 7501A and the Duty-Free Entry Certificate";

(iv) gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(v) estimated value in U.S. dollars.

(e) The Contractor agrees to instruct the foreign supplier to prepare a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry.

(f) The Contractor agrees to notify the Contract Administration Office (CAO) in writing of any purchase by the Contractor of qualifying country supplies that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government under the contract. Such notice shall be furnished to the CAO immediately upon the award by the Contractor to the qualifying country supplier. The notice shall identify (i) the qualifying country, (ii) the contract number, and (iii) the scheduled delivery date(s).

(g) This clause shall not apply to purchases of qualifying country supplies in connection with this contract if (i) such qualifying country supplies are identical in nature with supplies purchased by the Contractor or any subcontractor hereunder in connection with his commercial business; and (ii) it is not economical or feasible to account for such supplies so as to assure that the amount of such supplies for which duty-free entry is claimed pursuant to this clause does not exceed the amount thereof purchased in connection with this contract.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in all subcontracts for supplies hereunder that exceed $2,500. Each such subcontract shall require the subcontractor to identify this contract by its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause.

(End of clause)

7-104.33 *Inspection System*. When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause:

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-104.34 *Advance Payments*. When advance payments are to be made in accordance with Appendix E, Part 4, insert the following clause.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

ADVANCE PAYMENT (1976 OCT)

(1) *Amount of Advance*. At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (i) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (14)(d) below) as to the financial necessity therefor; (ii) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (14)(a) below; and (iii) without a properly certified invoice or invoices.

(2) *Special Bank Account*. Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (14)(b) below. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided,

each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[When considered not reasonably necessary for the protection of the Government, the countersignature requirement may be waived for contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances. In such cases, the following sentence may be added to paragraph (2)]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of paragraph (2) above.]

(2) The Contractor shall determine the estimated amount of advance payment necessary to meet the requirements of paragraph (3) hereof entitled "Use of Funds" to cover performance of the contract. This determination shall be pursuant to written instructions provided by the Administering Office (see paragraph (14)(d) hereof) relative to the (i) shortest practical period for which advance payments will be provided, (ii) format and frequency of requests for advance payments, and (iii) data required in support of each request. The estimate shall be adjusted for the amount by which actual cash expenditures for prior period performance of the contract exceeded or was less than the advance payments provided for such performance. The Contractor shall submit its estimate and supporting data in a Statement of Contractor's Request for Advance Payment to the Approving Official designated in writing by the Administering Office for advance payments. The request should be submitted sufficiently early to permit review, approval and disbursement of the required advance payment by the time the funds are actually needed by the Contractor.

(a) The Approving Official will review the Contractor's advance payment requirements to determine the reasonableness thereof, and if he or she concurs therein, the statement will be approved and forwarded to the Disbursing Office designated in the contract for payment. If the Approving Official determines that the advance payment requested by the Contractor is in excess of cash requirements for contract performance during the specified period of time, he or she will approve an amount based on such determination and forward the statement to the Disbursing Office for payment of the reduced amount. Upon any such reduction, the Approving Official will immediately notify the Administering Office in writing, with a copy to the Contractor, of the amount requested, the amount approved, and the reasons for reduction. The Administering Office will determine whether additional funds will be advanced to the Contractor.

(b) Upon receipt of the approved statement, the Disbursing Office will draw a Treasury check payable to the Contractor for the amount authorized by the Approving Official and mail such check to the Contractor in time to be received on or about the date the funds are required for contract performance.

(3) *Use of Funds*. The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Section XV of the Armed Services Procurement Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[*In the case of a cost-reimbursement contract, insert the following paragraph instead of paragraph (3) above.*]

(3) *Use of Funds*. The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article .... of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, insert the following paragraph instead of paragraph (3) above.*]

(3) *Use of Funds.* Advance payments hereunder are to be used by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of Section XV of the Defense Acquisition Regulation), or for the purpose of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(4) *Return of Funds*. The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in paragraph 14(a). In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the office designated for contract administration signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, the last sentence of paragraph (4) above should be omitted.*]

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to (—percent) of the stated contract price of $..............., or such lesser amount to which the contract price may have been reduced, plus (i) increases, if any (not resulting from any provisions for price redetermination or economic price adjustment), in the above stated contract price not exceeding, in the aggregate $.................................... (*Insert here not more than ten percent (10%) of stated contract price above*), and (ii) all increases in contract price resulting from any provision for price redetermination or economic price adjustment, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[*The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (5), with appropriate percentage specified.*]

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of ....percent from any and all payments made by the Government under the contracts involved.

[*In case of a cost-reimbursement contract, insert the following paragraph instead of paragraph* (5) *above.*]

(5) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost of $............................ for the work under this contract (not including fixed fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, $........................ (*Insert not more than ten percent* (*10%*) *of estimated costs stated above*), (including, without limitation, reimbursable costs incident to termination for the convenience of the Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[*In case the alternate procedure for advance payment without a bank account is to be used in accordance with E-413.1, insert the following paragraph (5) instead of one of the above.*]

(5) *Liquidation.* The Contractor should submit cost reimbursement vouchers on a regular and frequent basis in accordance with the payment provision of this contract. The Government shall withhold payments of such vouchers due the Contractor and apply the amounts withheld against the Contractor's obligation to repay advance payments made hereunder and interest charges thereon until such advance payments and interest charges shall have been fully liquidated upon completion or termination of the contract, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(6) *Interest Charge*. If required in paragraph (14)(c) below and at the daily rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or otherwise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the daily rate specified in paragraph (14)(c) shall be computed at the end of each calendar month in the manner herein specified on the daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365- or 366-day year as the case may be. In determining such balance, (1) charges on account of the advance payments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [*For cost-reimbursement contracts, use, instead of (2) above:* (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [*For cost-plus-fixed-fee contracts, use the following, instead of the next preceding sentence:* As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (11) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(7) *Bank Agreement*. Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank with the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(8) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(9) *Lien on Property Under Contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made by a lien in favor of the Government, paramount to all other liens, upon th the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify by marking or segregation all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt sh shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(10) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (i) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (ii) adequate insurance against liability on account of damage to persons or property; and (iii) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to his insurance as the Administering Office may from time to time require.

(11) *Default Provisions.* Upon the happening of any of the following events of default, (i) termination of this contract by reason of fault of the Contractor (ii) a finding by the Administering Office that the Contractor (a) has failed to observe any of the covenants, conditions or warranties of these provisions or has failed to comply with any material provision of this contract, or (b) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (c) has allocated inventory to this contract substantially exceeding reasonable requirements, or (d) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (iii) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the Contractor; (iv) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (v) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances; (a)

withdraw all or any part of the balance in the Special Bank Account by checks payable to the office designated for contract administration signed solely by the Countersigning Agent and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the contractor; (b) charge interest on advance payments outstanding during the period of any such default at either (i) the published prime rate of the banking institution in which the special bank account is established, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater; (c) demand immediate repayment of the unliquidated balance of advance payments hereunder; or (d) take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit references to the published prime rate of the financial institution and a special bank account in paragraph (11) above.*]

(12) *Prohibition Against Assignment*. Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(13) *Information—Access to Records*. The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required, together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records and accounts.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit the words "together with a monthly report on the operation of the special bank account in prescribed form" beginning in the 3rd line of paragraph (13) above.*]

(14) *Designations and Determinations*.

(a) *Amount*. The amount of advance payments at any time outstanding hereunder shall not exceed $............................. [*or alternatively:*]

(a) *Amount*. The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (4)) shall not exceed $..............................

(b) *Depository*. The bank designated for the deposit of payments made hereunder shall be .... [*This paragraph should be omitted if the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1.*]

(c) *Interest Charge*. Interest shall be charged in the manner provided herein at either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater. [*In the case of advance payments made without interest insert the following:*] No interest shall be charged for advance payments made hereunder, except as provided for in paragraph (11)(b). The Contractor shall charge interest at either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above, or (ii) the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97, whichever is greater, on subadvances or down payments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experiment, research or development work.

[*In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit "either (i) the published prime rate of the banking institution in which the special bank account is established as set forth in paragraph (14)(b) above or (ii)" and "whichever is greater" in (14)(c) above.*]

(d) *Administering Office*. The office administering advance payments is designated as ....

(15) *Other Security*. The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(16) *Representations and Warranties*. To induce the making of the advance payments, the Contractor represents and warrants that—

(a) The balance sheet, the profit and loss statement and any other supporting financial statements, heretofore furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(b) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(c) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(d) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(e) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(f) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(g) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(h) These representations and warranties shall be continuing, and shall be deemed to have been repeated by the submission of each invoice for advance payments. (MAY 1959)

(17) *Subadvances.* Substantially the following provision should be included in the contract when subadvances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or down payments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed .... percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance, with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate security for such subadvance.

[In case the alternate procedure for advance payments without a bank account is to be used in accordance with E-413.1, omit paragraph (17) above.]

(18) *Covenants.* The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office:

(a) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the contractor now owned or hereafter acquired by him, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(b) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(c) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of his capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions;

(d) Sell, convey, or lease all or a substantial part of his assets;

(e) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(f) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(g) Permit a writ of attachment or any similar process to be issued against his property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(h) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to his directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of $.................... per annum.

(i) Make any substantial change in management, ownership, or control of the corporation;

(j) Merge or consolidate with any other firm or corporation, change the type of his business or engage in any transaction outside the ordinary course of his business as presently conducted;

(k) Deposit any of his funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(l) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(m) Make or covenant himself to make capital expenditures exceeding in the aggregate $....................;

(n) Permit his net current assets, calculated in accordance with generally accepted accounting principles, to become less than $....................; or

(o) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

(End of clause)

7-104.35 *Progress Payments*. In accordance with E-510, insert one of the following clauses:

(a) Progress Payment Clause for Other Than Small Business Concerns.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENT FOR OTHER THAN SMALL BUSINESS CONCERNS (1978 JUL)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be (i) eighty percent (80%)**(See footnote at end of clause) of the amount of the Contractor's total costs which, except as provided in (a)(2) below, shall include only those recorded costs which result, at the time of the request, from payment made by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct in-house costs, and for properly allocable and allowable indirect costs, all as shown by records maintained by the Contractor for purposes of obtaining payment under Government contracts plus (ii) the amount of progress payments which have been paid to Contractor's subcontractors and other divisions as provided in (j) below; all less the sum of previous progress payments.

(2)(i) With respect to costs of pension, profit sharing, and employee stock ownership plan contributions, when these contributions are paid by the Contractor to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accruals of the costs of these contributions shall be excluded from the Contractor's total costs for progress payment purposes until such costs are paid. If pension, profit sharing, and employee stock ownership plan contributions are paid on a quarterly or more frequent basis, accruals of cost of these contributions may be included in the Contractor's total costs for progress payment purposes provided these contributions are paid to the pension, profit sharing, and employee stock ownership plan funds within thirty (30) days after the close of the period covered by the payment. If payments are not made to the pension, profit sharing, and employee stock ownership plan funds within such thirty (30) day period, these costs shall be excluded from the Contractor's total costs for progress payment purposes until payment therefor has been made.

(ii) For those Contractors who elected to use the special transition method provided in Cost Accounting Standard (CAS) 410, "Allocation of Business Unit General and Administrative Expense to Final Cost Objective", General and Administrative Expenses (G&A) shall not be included in incurred costs eligible for progress payments until the work-in-process inventories of those contracts entered into after the applicability date of CAS 410, exceed the amounts contained in the CAS 410 suspense account and then limited to this contract's pro rata share of the G&A allocable to such excess. This limitation shall not apply where the CAS 410 suspense account is less than 5 million dollars.

(3) The Contractor's total costs ((a)(1)(j)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(4) The amount of unliquidated progress payments shall not exceed the lesser of (i) eighty percent (80%)**(See footnote at end of clause) of the costs mentioned in (a)(1)(i) above, plus any unliquidated progress payments mentioned in item (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) eighty percent (80%)**(See footnote at end of clause) of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(5) The aggregate amount of progress payments made shall not exceed eighty percent (80%)**(See footnote at end of clause) of the total contract price.

(6) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(7) If this contract includes FMS requirements, the contractor shall submit his requests for progress payments in accordance with the procedures below.

(i) If the contract contains only one progress payment rate, and there is more than one customer country, the Contractor shall submit one DD Form 1195 with a supporting schedule showing the portions of the total requested payment to be attributed to each country's requirement.

(ii) If the contract contains more than one progress payment rate (U.S. and FMS requirements), then the Contractor shall submit separate DD Forms 1195 for the work covered by each different progress payment rate. If more than one FMS customer country is involved, the Contractor shall attach a supporting schedule showing the portions of the total requested payment to be attributed to each customer country's requirement. For the purpose of submitting DD Form 1195, the Contractor shall allocate costs among customer countries in a manner acceptable to the Administrative Contracting Officer.

(b) Liquidation. Except as provided in the clause entitled "Termination for Convenience of the Government" all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments; or eighty percent (80%)**(See footnote at end of clause) or the applicable percentage (calculated in accordance with references in the *footnote at the end of the clause) of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after calculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to the alternate rate when deemed appropriate for proper contract financing.

(c) Reduction or Suspension. The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

(d) Title. Immediately, upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling"; special test equipment and other special tooling to which the Government is to acquire title pursuant to any other provision of this contract; nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids title to which is not obtained as special tooling pursuant to this paragraph; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocable or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) Risk of Loss. Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) Control of Costs and Property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports - Access to Records. Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify his books, records and accounts.

(h) Special Provisions Regarding Default. If this contract is terminated pursuant to the clause entitled "Default," (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) Reservations of Rights. The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) Progress Payments to Subcontractors.

(1) The amounts mentioned in item (a)(1)(ii) above shall be all progress payments paid by the Contractor to his subcontractors or other divisions and remaining unliquidated when under subcontracts or interdivisional orders which conform to (2) below.

(2) Subcontractors or interdivisional orders on which progress payments to subcontractors or other divisions may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," between the beginning of work and the first delivery, approximating four months or more for small business concerns and six months or more for firms which are not small business concerns, and in which the provisions regarding progress payments (i) are substantially similar to and as favorable to the Government as this "Progress Payment" clause, no more favorable to the subcontractor or the other division than this clause is to the Contractor and on a basis of not more than eighty percent (80%) **(See footnote at end of clause) of total costs (except that in the case of those subcontractors which are small business

concerns a "Progress Payment" clause substantially similar to 7-104.35(b) may be used); and (ii) make all rights of the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to offer and provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the Defense Acquisition Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(End of Clause)

*See E-512.2 and E-512.3 for calculation of alternate liquidation percentages. For contractors who elected to use the transition method in Appendix A of CAS 410, see E-512.1 and E-512.3(f) for calculation of adjusted ordinary and alternate liquidation percentages.

**A progress payment percentage of 90 percent (and applicable liquidation rate) is applicable for Foreign Military Sales (FMS) contracts and to the FMS portion of combined procurements. See E-503.2.

(b) *Progress Payment Clause for Small Business Concerns.*

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENT FOR SMALL BUSINESS CONCERNS (1978 JUL)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer under the following terms and conditions.

(a) *Computation of Amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be (i) eighty-five percent (85%)** (See footnote at end of clause) of the amount of the Contractor's total costs incurred under this contract, except as provided herein with respect to costs of pension contributions, plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments. With respect to costs of pension contributions, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accruals of the costs of these pension contributions shall be excluded from Contractor's total costs for progress payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals of the costs of these pension contributions may be included in Contractor's total costs for progress payment purposes provided that the pension contributions are paid to the retirement fund within thirty (30) days after the close of the period covered by the payment. If payments are not made to the fund within such thirty-day period, pension contribution costs shall be excluded from Contractor's total costs for progress payment purposes until payment therefor has been made.

(2) The Contractor's total costs ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) eighty-five percent (85%)**(See footnote at end of clause) of the costs mentioned in (a)(1)(i) above, plus any unliquidated progress payments mentioned in item (a)(1)(ii) above, both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) eighty-five percent (85%)** (See footnote at end of clause) of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments.

(4) The aggregate amount of progress payments made shall not exceed eighty-five percent (85%)**(See footnote at end of clause) of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(6) If this contract includes FMS requirements, the Contractor shall submit his requests for progress payments in accordance with the procedures below.

(i) If the contract contains only one progress payment rate, and there is more than one customer country, the Contractor shall submit one DD Form 1195 with a supporting schedule showing the portions of the total requested payment to be attributed to each country's requirement.

(ii) If the contract contains more than one progress payment rate (U.S. and FMS requirements), then the Contractor shall submit separate DD Forms 1195 for the work covered by each different progress payment rate. If more than one FMS customer country is involved, the Contractor shall attach a supporting schedule showing the portions of the total requested payment to be attributed to each customer country's requirement. For the purpose of submitting DD Form 1195, the Contractor shall allocate costs among customer countries in a manner acceptable to the Administrative Contracting Officer.

(b) Liquidation. Except as provided in the clause entitled "Termination for Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or eighty-five percent* (85%)**(See footnote at end of clause) of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after calculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) Reduction or Suspension. The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

(d) Title. Immediately, upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling as defined in the clause of this contract entitled "Special Tooling"; special test equipment and other special tooling to which the Government is to acquire title pursuant to any other provision of this contract; nondurable (i.e. noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids title to which is not obtained as special tooling pursuant to this paragraph; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocable or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and dispositon of such property shall be determined by the applicable provisions of this contract such as: the Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause; and the Special Tooling clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) Risk of Loss. Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft or destruction of or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, stolen, destroyed or damaged property.

(f) Control of Costs and Property. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) Reports--Access to Records. Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify his books, records and accounts.

(h) Special Provisions Regarding Default. If this contract is terminated pursuant to the clause entitled "Default," (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) Reservations of Rights. The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power or privilege under this clause shall affect any such right, power or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power or privilege of the Government.

(j) Progress Payments to Subcontractors.

(1) The amount mentioned in item (a)(1)(ii) above shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (2) below.

(2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," between the beginning of work and the first delivery, approximating four months or more for small business concerns and six months or more for firms which are not small business concerns, and in which the provisions regarding progress payments (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than the clause is to the Contractor and on a basis of not more than eighty-five percent (85%)**(See footnote at end of clause) of total costs (except that for those subcontractors that are not small business concerns a "Progress Payments" clause substantially similar to 7-104.35(a) will be used, and (ii) make all rights of the subcontractor with respect to all property to which the Government has title

under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor.

(3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor.

(4) The billings described in (j)(1)(ii) above shall be paid promptly by the Contractor in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor.

(5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to offer and provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraph 503 of Appendix E of the Defense Acquisition Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(End of Clause)

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*For lower percentages for this paragraph (b) and for (a)(3)(iii) and (a)(4), see E-512.1.

**A progress payment percentage of 95 percent (and applicable liquidation rate) is applicable to Foreign Military Sales (FMS) contracts and to the FMS portion of combined procurements. See E-503.2.

7-104.36 *Reserved.*

7-104.37 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the following clause:

REQUIRED SOURCE FOR JEWEL BEARINGS AND RELATED ITEMS (1977 NOV)

(a) This clause is applicable only if supplies furnished under this contract contain jewel bearings or related items as described below.

(b) For the purpose of this clause:

(1) *Jewel Bearing* means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, which has one or more polished surfaces and the function of which is to provide a supporting surface or low friction contact area for revolving, oscillating or sliding parts in an instrument, mechanism, subassembly or part. A jewel bearing may be either unmounted or mounted into a ring or bushing. Examples of types of jewel bearings are: watch hole—olive, watch hole—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cup, double cups.

(2) *Related Item* means a piece of synthetic corundum (sapphire or ruby) which satisfies the following requirements:

a. made from material produced by the Verneuil flame fusion process;

b. a geometric shape (other than a jewel bearing) up to a maximum of one inch in any dimension;

c. requires fabrication techniques to include extremely close tolerances and highly polished surfaces identical to those involved in the manufacture of jewel bearings.

A related item may be unmounted or mounted in a retaining or supporting structure. Basic shapes and terminology commonly used for related items are: window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, notched plate.

(3) *Price List* means the official United States Government Jewel Bearing Price List for jewel bearings which are produced by the William Langer Jewel Bearing Plant in Rolla, North Dakota, published periodically by the General Services Administration.

(4) *Plant* means the Government-owned William Langer Plant, Rolla, North Dakota, 58367 (701 477-3193).

(c) All jewel bearings and related items, in the quantities and of the types and sizes (including tolerances), required to produce the end items to be supplied under this contract shall be procured from the following sources in the order of priority stated. Jewel bearings must be procured from the Plant; related items must be procured from (i) a domestic source of manufacture, including the Plant, or, if those sources cannot supply the item(s), then (ii) from a foreign source.

(1) Orders for jewel bearings or related items may be placed with the Plant for individual contracts, or they may be placed for the requirements of a combination of contracts. Additionally, the Contractor may place annual stock orders of jewel bearings or related items. When the prime or subcontractor purchases jewel bearings or related items to fulfill requirements for an individual contract, the prime contract number shall be placed on all purchase orders with the Plant.

(2) Orders for jewel bearings and related items listed in the price list should reference the most recent Plant price list and provide its date.

(3) Requests for quotation on jewel bearings and related items not listed in the price list should be accompanied by drawings of such jewel bearings and related items and should be forwarded to the Plant as soon as possible to insure their prompt quotation or rejection of the order.

(d) The Plant may reject the Contractor's order at the option of the Plant. Unless rejection is caused by reason of currently outstanding excessive and overdue indebtedness to the Plant by the Contractor as determined by the Plant, an equitable adjustment shall be made in the contract price or delivery schedule, or both. The Contractor shall promptly notify the ACO of the rejection of his or any subcontractor's purchase order, in whole or in part, by the Plant for whatever reason, by providing the ACO a copy of the Plant rejection document. The same procedure shall apply with regard to orders for related items rejected by any domestic source of manufacture.

(e) The Contractor agrees to insert this clause and the prime contract number, including this paragraph (e), in every subcontract unless he has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

(End of clause)

7-104.38 *Required Sources for Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the following clause:

REQUIRED SOURCES FOR MINIATURE AND INSTRUMENT BALL BEARINGS (1971 JUL)

(a) For the purpose of this clause

(i) "*miniature and instrument ball bearings*" are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance or quality characteristics; and

(ii) "*domestic manufacture*" means manufacture in the United States or Canada and, when ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain miniature and instrument ball bearings that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire for non-Government use, domestically manufactured miniature and instrument ball bearings of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract unless he knows that the item being purchased contains no miniature or instrument ball bearings.

(End of clause)

7-104.39 *Interest.* In accordance with E-620, insert the following clause:

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

INTEREST (1972 MAY)

Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract, (ii) the date of the first written demand for payment, con-

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sistent with this contract, including demand consequent upon default termination; (iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

(End of clause)

The interest rates established by the Secretary of the Treasury will be published in the Federal Register every six months. The current rate may also be obtained from the Departmental Contract Finance Office representative.

7-104.40 *Competition in Subcontracting.* The following clause shall be included in all negotiated contracts over $10,000, except in firm fixed-price contracts where award is on the basis of effective price competition or where prices are established by law or regulation.

COMPETITION IN SUBCONTRACTING (1962 APR)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(End of clause)

7-104.41 *Audit by Department of Defense.*

(a) Insert the following clause in all contracts (except those entered into by formal advertising which are not expected to exceed $100,000).

AUDIT BY DEPARTMENT OF DEFENSE (1978 AUG)

(a) *General.* The Contracting Officer or his representatives shall have the audit and inspection rights described in the applicable paragraphs (b), (c) and (d) below.

(b) *Examination of Costs.* If this is a cost reimbursement type, incentive, time and materials, labor hour, or price redeterminable contract, or any combination thereof, the Contractor shall maintain, and the Contracting Officer or his representatives shall have the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

(c) *Cost or Pricing Data.* If the Contractor submitted cost or pricing data in connection with the pricing of this contract or any change or modification thereto, unless such pricing was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the Contracting Officer or his representatives who are employees of the United States Government shall have the right to examine all books, records, documents and other data of the Contractor related to the negotiation, pricing or performance of such contract, change or modification, for the purpose of evaluating the accuracy, completeness and currency of the cost or pricing data submitted. Additionally, in the case of pricing any change or modification exceeding $100,000 to formally advertised contracts, the Comptroller General of the United States or his representatives who are employees of the United States Government shall have such rights. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(d) *Reports.* If the Contractor is required to furnish Contractor Cost Data Reports (CCDR), Contract Fund Status Reports (CFSR), or Cost Performance Reports (CPR) the Contracting Officer or his representatives shall have the right to examine books, records, other documents, and supporting materials, for the purpose of evaluating (i) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports, and (ii) the data reported.

(e) *Availability.* The materials described in (b), (c) and (d) above shall be made available at the office of the Contractor, at all reasonable times, for inspection, audit, or reproduction, until the expiration of three (3) years from the date of final payment under this contract or such lesser time specified in Appendix M of the Armed Services Procurement Regulation, and for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (1) and (2) below:

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for a period of three (3) years from the date of any resulting final settlement.

(2) Records which relate to appeals under the "*Disputes*" clause of this contract, or litigation, or the settlement of claims arising out of the performance of this contract, shall be made available until such appeals, litigation, or claims have been disposed of.

(f) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (f), in all subcontracts exceeding $10,000 hereunder, except altered as necessary for proper identification of the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

(b) In the case of consolidated facilities contracts, facilities acquisition contracts and facilities use contracts, paragraph (b) of the clause should be amended to read:

(b) *Examination of Costs.* The Contractor shall maintain, and the Contracting Officer and his representatives shall have the right to examine, books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly (1) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract and (2) the use of, and charges for the use of, the facilities. Such right of examination shall include inspection at all reasonable times of the Contractor's plants, or such parts thereof, as may be engaged in the performance of this contract.

7-104.42 *Subcontractor Cost or Pricing Data.*

(a) The following clause shall be inserted in all negotiated contracts expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The contracting officer may include this clause, with appropriate reduction in the dollar amounts included therein, in other negotiated contracts where a Certificate of Current Cost or Pricing Data is required (see 3-807.3(b)(iii)) in connection with initial pricing of the contract.

SUBCONTRACTOR COST OR PRICING DATA (1970 JAN)

(a) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $100,000 when entered into, (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief, the cost and pricing data submitted under (a) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each subcontract hereunder which exceeds $100,000 when entered into except where the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder in excess of $100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such contract modifications.

(b) The Contractor shall require subcontractors hereunder to submit, actually or by specific identification in writing, cost or pricing data under the following circumstances: (i) prior to award of any subcontract, the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000 when entered into.

(End of clause)

(b) Insert the following clause in all contracts, both formally advertised and negotiated, which exceed $100,000 other than those described in (a) above:

SUBCONTRACTOR COST OR PRICING DATA—PRICE ADJUSTMENTS (1970 JAN)

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any modification made pursuant to one or more provisions of this contract which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. The requirements of this clause shall be limited to such modifications.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances: (i) prior to the award of any subcontract the amount of which is expected to exceed $100,000 when entered into; (ii) prior to the pricing of any subcontract modification which involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000; except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under (b) above is accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract which exceeds $100,000.

(End of clause)

(c) The requirement for inclusion of the above clauses in contracts with foreign governments or agencies thereof may be waived in exceptional cases by the Head of a Procuring Activity, stating in writing his reasons for such determination.

7-104.43 *Reserved.*

7-104.44 *Value Engineering (VE).*

(a) In accordance with 1-1704, insert the following clause:

VALUE ENGINEERING (1980 DEC)

(a) *Applicability.* This clause applies to any Value Engineering Change Proposal (VECP) developed, prepared, and submitted by the Contractor.

(b) *Definitions.*

(1) "Acquisition savings" means savings resulting from the application of VECPs to contracts awarded by the same contracting office for essentially the same unit. Acquisition savings include:

(i) instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the unit cost reduction multiplied by the number of units affected by the VECP, less the Contractor's allowable development and implementation costs (on service contracts, the unit cost reduction is multiplied by the labor-hour rate agreed upon for the tasks involved; then the Contractor's allowable development and implementation costs are subtracted from the total);

(ii) concurrent contract savings, which are measurable net reductions in the prices of other contracts of the contracting office in existence at the time the VECP was accepted; and

(iii) future contract savings, which are the product of the unit cost reduction under the instant contract, adjusted to consider the effects of learning, quantities, or other similar factors, multiplied by the number of units scheduled for delivery during the sharing period. If the instant contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

(2) "Collateral costs" means agency costs of operation, maintenance, logistic support, or Government-furnished property.

(3) "Collateral savings" means those measurable net reductions resulting from the VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

(4) "Contractor's development and implementation costs" means costs which the Contractor incurs specifically in its development, testing, preparation, and submission of the VECP, as well as its costs to make the contractual changes required by Government acceptance of the VECP.

(5) "Government costs" means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistics support. They do not include the normal administrative costs of processing the VECP.

(6) "Instant contract" means this contract, under which the VECP is submitted. It does not include increases in quantities after approval of the VECP due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, it does not include quantities funded after VECP approval. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established. These additional quantities shall be treated as future contracts.

(7) "Negative instant contract savings" means that the acceptance of the VECP results in:

(i) a reduction in the instant contract of the actual unit cost;

(ii) an excess of contractor's development and implementation costs as compared to the unit cost reduction multiplied by the number of units affected; and

(iii) a consequent equitable adjustment increasing the instant contract price.

These savings are not a Government cost.

(8) "Net acquisition savings" means acquisition savings less Government costs.

(9) "Sharing period" means that period that extends to the 3 years after acceptance of the first item incorporating the VECP, or the delivery schedule in effect for all affected end items on the instant contract when the VECP is accepted, whichever is longer.

(10) "Unit" means the item or task to which the parties agree the VECP shall apply.

(11) "Unit cost reduction" means the amount of the decrease in unit cost of performance (without deducting any development or implementation costs and, for future contracts, with adjustments for learning, change in quantities, or other similar factors as necessary) resulting from using the VECP. On service contracts, the unit cost reduction is equal to the costs per hour multiplied by the number of hours per line item task saved by the VECP.

(12) "Value Engineering Change Proposal (VECP)" means a proposal that:

(i) requires a change to this, the instant contract, to implement; and

(ii) results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, *provided* That it does not involve a change:

  (A) in deliverable quantities only;

  (B) in R&D quantities or test quantities due solely to results of previous testing under the instant contract; or

  (C) to the contract type only.

(c) *VECP Preparation.* As a minimum, the Contractor shall include the information described in (1) through (7) below in each VECP. If the proposed change affects contractually required configuration management or similar procedures, the instructions in the procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement; the comparative advantages and disadvantages of each; a justification when an item's function or characteristics are being altered; the effect of the change on the end item's performance; and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for both the affected portions of the existing contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (i) of this clause. The Contractor shall also include a description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation, and operating and support costs.

(4) A projection of any effects the proposed change would have on collateral costs to the agency.

(5) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(6) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(7) Identification of the unit to which the VECP applies.

(d) *Submission.*

(1) The Contractor shall submit VECPs to the Principal Contracting Officer (PCO), unless otherwise designated in the contract. When the contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the PCO and to the Administrative Contracting Officer (ACO). The PCO shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional

time is required because of extenuating circumstances, the Contractor shall be notified within the 45-day period and provided the reason for the delay and the expected date of the Contracting Officer's decision. VECPs shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall provide the Contractor with written notification, explaining the reasons for rejection. The Contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(e) *Acceptance*. Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after the contract performance is completed. If a VECP is accepted, the Contractor shall share in the net acquisition savings realized by the Government in accordance with paragraph (f) below. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept or reject all or part of any VECP, and the decision as to which of the sharing rates in (f)(1) below are applicable shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978.

(f) *Sharing*.

(1) Rates. The Contractor shall share in net acquisition savings at a percentage rate determined by (i) the type of contract; (ii) the Value Engineering clause or alternate clause used; and (iii) if applicable, the schedule in this contract, as follows:

	Incentive (Voluntary)		Program Requirement (Mandatory)	
TYPE OF CONTRACT	Instant	Concurrent and Future	Instant	Concurrent and Future
Fixed-Price (Other than Incentive)	50	50	25	25
Incentive (Fixed-Price or Cost)	*	50	*	25
Cost-Reimbursement** (Other than Incentive)	25	25	15	15

* Same ratio as the contract's cost incentive ratio.
** Includes cost-plus-award-fee contracts.

(2) Computation of Net Acquisition Savings.

a. Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset. Except in incentive contracts, Government costs, and any price or cost increases resulting from negative instant contract saving (see (f)(3)(i)), shall be offset against acquisition savings as such savings are realized on the instant contract, reductions negotiated in concurrent contracts, awards of future contracts, or agreement on a lump-sum payment for future savings (see (f)(4)). The Contractor's share of savings is computed by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see (f)(1)). Additional payments of the Contractor's share of net acquisition savings shall be paid to the Contractor at the time realized.

b. If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share in savings on the instant contract items affected through the contract incentive structure. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future savings.

(3) Contract Adjustment and Payment. The modification accepting the VECP shall:

- (i) reduce the contract price or estimated cost by the value of instant contract savings, unless this is an incentive contract for which a fixed price has not been established (regardless of contract type, when instant contract savings are negative, the contract price, target price or cost, estimated cost, or ceiling price will be increased);
- (ii) specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;
- (iii) specify the amount of any Government costs or negative instant contract savings to be offset against net acquisition savings realized from concurrent or future contract savings; and
- (iv) provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:
  - (A) Fixed-price contracts--add to contract price.
  - (B) Cost-reimbursement contracts--add to contract fee.

(4) Concurrent and Future Contract Savings.

a. Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with (f)(3)(iv). For incentive contracts, add shares as a separate firm-fixed-price line item on the instant contract. When sharing on future contracts is expected, the Contractor shall maintain records to identify the first delivered unit for 3 years after final payment under the instant contract. If the instant contract is for low rate initial production or an earlier life-cycle phase, the future sharing period shall encompass scheduled deliveries, equal in number to the quantity required by the highest 36 consecutive months of planned production, based on the Five Year Defense Program (FYDP) or other planning documentation at the time the VECP is accepted.

b. When the Government wishes and the Contractor agrees, payment of the Contractor's share of future contract savings may be made in a single lump-sum payment rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in the modification incorporating the VECP into the instant contract and shall not be subject to subsequent adjustment.

c. The Contractor's share on concurrent savings shall be determined by taking the reduction in price of the concurrent contract, subtracting any Government costs or increase in instant contract price or target not yet offset, and multiplying the result by the Contractor's sharing percentages.

d. The Contractor's share on future contracts shall be determined by multiplying the number of units scheduled for delivery prior to the expiration of the sharing period times the unit cost reduction appropriate to the contract times the Contractor's sharing rate.

e. If the Government properly rejects or does not receive units on which the share is paid, the Contractor shall reimburse the Government the proportionate share of these payments.

(g) *Collateral Savings*. If a VECP is accepted, the instant contract amount shall be increased, as specified in (f)(3)(iv), by 20 percent of the projected net reduction in collateral costs determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings shall not exceed (i) the contract's firm fixed price, target price, target cost, or estimated cost at the time the VECP is accepted, or (ii) $100,000, whichever is greater. The Contracting Officer shall be the sole determiner of the amount of collateral savings, and that amount shall not be subject to the Disputes clause. In all cases, degradation of performance, service life, or capability shall be considered in determining savings.

(h) *Relationship to Other Incentives*. Those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. The targets of such incentives affected by the VECP shall not be adjusted because of VECP acceptance. If this contract does not provide such incentives to surpass specified targets, the VE sharing shall apply only to the amount of achievement better than target.

(i) *Subcontracts.* The Contractor shall include appropriate VE clauses in any subcontract of $100,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the contract price under paragraph (f) above, the Contractor's VECP development and implementation costs shall include any subcontractor's development and implementation costs and any VE incentive payments to subcontractors that clearly result from the VECP. No such payment or accrual to a subcontractor will be permitted to reduce the Government's share of concurrent, future, or collateral savings.

(j) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by making the following legend on the affected parts:

> "These data, furnished under the Value Engineering clause of Contract __________, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

(End of clause)

(b) Alternate I. In accordance with 1-1704.2, if the Contracting Officer selects a mandatory VE program requirement, substitute the following in place of paragraph (a) of the basic clause:

> (a) *General.* The Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the contract schedule, and (ii) submit to the Contracting Officer any resulting Value Engineering Change Proposals (VECPs). (1980 DEC)
>
> (End of clause paragraph)

(c) Alternate II. In accordance with 1-1704.3, if the Contracting Officer selects both a VE incentive and mandatory VE program requirement, substitute the following in place of paragraph (a) of the basic clause:

> (a) *Applicability.* This clause applies to any Value Engineering Change Proposal (VECP) developed, prepared, and submitted by the Contractor. For those contract line items designated in the schedule as subject to the VE program requirement, the Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the schedule, and (ii) submit to the Contracting Officer any resulting VECPs. The VE incentive provisions shall apply to the remaining areas of the contract. (1980 DEC)
>
> (End of clause paragraph)

(d) Alternate III. In accordance with 1-1704.4, when the head of the contracting activity determines that the cost of computing and tracking collateral savings will exceed the benefits to be derived, use the basic clause in 7-104.44, delete paragraph (g), and renumber the remaining paragraphs.

(e) Alternate IV. If a mandatory VE program requirement is included in an architect-engineer contract, use the clause in 7-104.44, but substitute paragraph (a) below for paragraph (a) of the basic clause, delete paragraphs (f), (g), and (h) of the basic clause, and renumber the remaining paragraphs.

> (a) *General.* The Contractor shall (i) engage in a VE program and submit VE progress reports as specified in the contract schedule, and (ii) submit to the Contracting Officer any resulting Value Engineering Change Proposals (VECPs). (1980 DEC)
>
> (End of clause paragraph)

[The next page is 7:105.]

7-104.45 *Limitation of Liability.*

(a) In accordance with 1-330, insert the following clause.

LIMITATION OF LIABILITY (1974 APR)

(a) Except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

- (i) all or substantially all of the Contractor's business; or
- (ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or
- (iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government under this contract, the Contractor shall be liable to the Government to the extent of such insurance or reserve for self-insurance for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies.

(d) The substance of this clause, including this paragraph (d) suitably altered to reflect the relationship of the contracting parties, shall be included in all subcontracts hereunder.

(End of clause)

(b) In accordance with 1-330, in procurements of major items, insert the following clause.

LIMITATION OF LIABILITY — MAJOR ITEMS (1979 MAR)

(a) Except as provided below, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

- (i) all or substantially all of the Contractor's business; or
- (ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or
- (iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government under this contract, the Contractor shall be liable to the Government for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies to the extent of such insurance or reserve for self-insurance.

(d) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair, replacement or other relief for any defect or deficiency in supplies delivered under this contract. If loss or damage has occurred and correction, repair, or replacement is no longer feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer:

- (i) pay to the Government the amount which it would have cost the Contractor to make such correction, repair or replacement before the loss or damage occurred, or
- (ii) provide other equitable relief.

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract:

GROUND AND FLIGHT RISKS,
GOVERNMENT PROPERTY, and
WARRANTY OF TECHNICAL DATA.

(f) In all subcontracts hereunder, except those covered by (g) below, the Contractor shall either:

- (i) insert, with the advance written consent of the Contracting Officer, the substance of this clause, including this paragraph (f), suitably altered to reflect the relationship of the contracting parties; or
- (ii) insert the substance of the clause in 7-104.45(a) suitably altered to reflect the relationship of the contracting parties.

(g) In subcontracts for both major items for which this clause is appropriate, and other end items for which the clause in 7-104.45(a) is appropriate, the substance of both clauses shall be included, with the advance written consent of the Contracting Officer. The Contractor shall identify high unit cost items by line item and include the following preamble to this clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)

(c) In contracts for the purchase of both major items (see 1-330) for which the clause in (b) above is appropriate, and other contract end items for which the clause in (a) above is appropriate, the clauses in both (a) and (b) above shall be included. The Contracting Officer shall identify high unit cost items by line item and include the following preamble to the Limitation of Liability - Major Items clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

7-104.46 *Required Sources for Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4, insert the following clause:

REQUIRED SOURCES FOR PRECISION COMPONENTS FOR MECHANICAL TIME DEVICES (1971 AUG)

(a) For the purpose of this clause:

(i) *precision components for mechanical time devices* are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches, and surface finishes better than 65 rms. Examples of such precision components include: gears, pinions, posts, and plates.

(ii) "domestic manufacture" means manufacture in the United States or Canada, and, when mechanical timing assembly is involved, all precision components of the assembly must also have been manufactured in the United States or Canada.

(b) The Contractor agrees that end items and components thereof delivered under this contract shall contain precision components for mechanical time devices that are of domestic manufacture only.

(c) The requirement for delivery in (b) above may be waived in whole or in part by the Contracting Officer when such waiver is determined to be in the Government's interest. In the event a waiver is granted, the Contractor agrees to acquire, for non-Government use, domestically manufactured precision components for mechanical time devices of a like quantity and type.

(d) The Contractor agrees to retain until the expiration of three years from the date of final payment under this contract and to make available during such period, upon request of the Contracting Officer, records showing compliance with this clause.

(e) The Contractor agrees to insert this clause, including this paragraph (e), in every subcontract and purchase order issued in performance of this contract unless he knows that the item being purchased contains no precision components for mechanical time devices.

(End of clause)

7-104.47 *Multi-Year Procurement*. In accordance with 1-322.5, insert the following clauses.

(a)

LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS (1966 OCT)

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multi-Year Procurement".

(b) Funds are available for performance of this contract in the amount specifically described in the Schedule, as available for contract performance. The amount of funds so described at the time of award is not considered sufficient for the contract performance required by and described in the Schedule for any Program Year other than the First Program Year. Upon availability to the Contracting Officer of additional funds sufficient for performance of the full requirements for the next succeeding Program Year, the Contracting Officer shall, not later than the date specified in the Schedule, unless a later date is agreed to by the parties, so notify the Contractor in writing and the amount of funds described in the Schedule as available for contract performance shall be modified accordingly. This procedure shall apply for each successive Program Year.

(c) The Government is not obligated to the Contractor for contract performance in any monetary amount in excess of that described in the Schedule or modifications thereto, as available for contract performance.

(d) The Contractor is not obligated to incur costs for the performance required for any Program Year after the first unless and until he has been notified in writing by the Contracting Officer of an increase in availability of funds in accordance with paragraph (b) of this clause. If so notified, the Contractor's obligation shall be increased only to the extent contract performance is required for the additional Program Year for which funds have been made available.

(e) In the event of termination pursuant to the "Termination for Convenience of the Government" clause of this contract, the terms "total contract price" as used in that clause refers to the amount available for performance of this contract, as provided for in this clause, plus the applicable amount established as the cancellation ceiling, and the term "work under the contract" as used in that clause refers to the work under Program Year requirements for which funds have been made available. In the event of termination for default, the Government's rights under this contract shall apply to the entire multi-year requirements.

(f) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract as a result of a clause other than this clause (e.g., exercise of an option for increased quantities or the "Changes" clause) shall not constitute the notification contemplated by paragraph (b) of this clause.

(End of clause)

(h)

CANCELLATION OF ITEMS (1974 APR)

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multi-Year Procurement."

(b) As used herein, the term "cancellation" means that the Government is cancelling, pursuant to this clause, its Program Year requirements for items as set forth in the Schedule for all Program Years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur only if, by the date or within the time period specified in the Schedule, or such further time as may be agreed to, the Contracting Officer (i) notifies the Contractor that funds will not be available for contract performance for any subsequent Program Year; or (ii) fails to notify the Contractor that funds have been made available for performance of the Program Year requirement for the succeeding Program Year.

(c) Except for cancellation pursuant to this clause or for termination pursuant to the "Default" clause, any reduction by the Contracting Officer in the quantities called for under this contract shall be considered a termination in accordance with the "Termination for Convenience of the Government" clause of this contract.

(d) In the event of cancellation pursuant to this clause, the Contractor will be paid, as consideration therefor, a cancellation charge not to exceed the cancellation ceiling described and separately set forth in the Schedule as being applicable at the time of cancellation.

(e) The cancellation charge is intended to cover (i) only costs reasonably necessary for production which would have been equitably amortized in the unit prices for the entire multi-year contract period, but which, because of the cancellation, are not so amortized and (ii) a reasonable profit on such costs. The cancellation charge shall be computed and claim therefor made as would be applicable under the "Termination for Convenience of the Government" clause of this contract. The Contractor shall submit the claim promptly but in no event later than one year (i) from the date of notification of the nonavailability of funds, if issued pursuant to paragraph (b)(i), or (ii) from the date specified in the schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. The claim may include reasonable preproduction and other nonrecurring costs, incurred by the Prime Contractor or his subcontractor, applicable to and which normally would be amortized in all items to be furnished under the multi-year requirements, such as plant rearrangement, special tooling, preproduction engineering, initial rework, initial spoilage and pilot runs, as well as costs not amortized by the level contract unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning. The claim shall not include any amount for:

(i) labor, materials, or other expenses incurred by the Contractor or its subcontractors for production of the canceled items;

(ii) any item or cost for which payment has already been made to the Contractor; or

(iii) anticipated profit on the canceled items.

(f) If this contract includes an option to increase quantities in which the period for exercise of the option is limited to the date set forth in the contract for notifying the Contractor that funds are available for the requirement of the next succeeding program year, the Contractor agrees not to include in the price for option quantities any costs of a startup or nonrecurring nature, which costs have been fully provided for in the unit prices of the firm quantities of the Program Years, and further agrees that the prices offered for option quantities will reflect only those recurring costs, and a reasonable profit thereon, which are necessary to furnish the additional option quantities. Therefore, any quantities added to the original contract quantities through exercise of the Government option in the "Option to Increase Quantities" clause of this contract shall not be subtracted from what would otherwise be considered the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

7–104.48 *New Material.* In accordance with 1–1208, insert the following clause.

NEW MATERIAL (1965 JAN)

Except as to any supplies and components which the Specification or Schedule specifically provides need not be new, the Contractor represents that the supplies and components including any former Government property identified pursuant to the "Government Surplus" clause of this contract to be provided under this contract are new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). If at any time during the performance of this contract, the Contractor believes that the furnishing of supplies or components which are not new is necessary or desirable, he shall notify the Contracting Officer immediately, in writing, including the reasons therefor and proposing any consideration which will flow to the Government if authorization to use such supplies is granted.

(End of clause)

7–104.49 *Government Surplus.* In accordance with 1–1208, insert the following clause.

GOVERNMENT SURPLUS (1965 JAN)

(a) In the event the bid or proposal is based on furnishing items or components which are former Government surplus property or residual inventory resulting from terminated Government contracts, a complete description of the items or components, quantity to be used, name of Government agency from which acquired, and date of acquisition shall be set forth on a separate sheet to be attached to bid or proposal. Notwithstanding any information provided in accordance with this provision, items furnished by the Contractor must comply in all respects with the specifications contained herein.

(b) Except as disclosed by the Contractor in (a) above, no property of the type described herein shall be furnished under this contract unless approved in writing by the Contracting Officer.

(End of clause)

7–104.50 *Management Systems.* In accordance with 1–331(e), insert the following clause.

MANAGEMENT SYSTEMS REQUIREMENTS (1971 NOV)

The Contractor shall utilize the management systems listed on the DD Form 1660, Management Systems Summary List, attached hereto and made a part hereof. Compliance with this clause shall not relieve the Contractor from complying with any other provision of this contract.

(End of clause)

7–104.51 *Production Progress Report.* In accordance with 25–202, insert the following clause.

PRODUCTION PROGRESS REPORTS (1971 APR)

(a) The Contractor shall prepare and submit to the Contracting Officer Production Progress Reports in accordance with the instructions set forth elsewhere in this contract.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(b) During any delay in furnishing a Production Progress Report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding $10,000 or 5% of the amount of this contract, whichever is less.

(End of clause)

7-104.52 *Utilization of Women-Owned Business Concerns (Over $10,000).* In accordance with 1-708(b), insert the following clause.

UTILIZATION OF WOMEN-OWNED BUSINESS CONCERNS (OVER $10,000) (1980 AUG)

(a) It is the policy of the United States Government that women-owned businesses shall have the maximum practicable opportunity to participate in the performance of contracts awarded by any Federal agency.

(b) The Contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, a "women-owned business" concern means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business and that is a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(c) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as women-owned business concerns.

(End of clause)

7-104.53 *Reserved.*
7-104.54 *Reserved.*

7-104.55 *First Article Approval.*

(a) In accordance with 1-1903, insert the following clause when the contractor is responsible for conducting first article approval test:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (1969 SEP)

(a) The first article is .... unit(s) of Lot/Item .... which shall be tested in accordance with the provisions contained or referenced in this contract. At least .... (—) calendar days prior to the beginning of first article approval tests, the Contractor shall furnish written notice to the Contracting Officer of the time and location of the testing so that the Government may witness such testing if it so elects.

(b) Within .... (—) calendar days from the date of this contract, the first article approval test report shall be forwarded to .... (Set forth address of office to receive the report.) marked "FIRST ARTICLE: Contract No. ...., Lot/Item No. ...." The Contracting Officer shall, by written notice to the Contractor within .... (—) calendar days after receipt of such test report by the Government, approve, conditionally approve, or disapprove such first article. The notice of approval or conditional approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons therefor.

(c) If the first article is disapproved by the Government, the Contractor may be required, at the option of the Government, to repeat any or all of the first article approval tests. After each notification by the Government of the requirement for additional tests, the Contractor shall at no additional cost to the Government make any necessary changes, modifications, or repairs to the first article or select another first article for testing. Thereafter, the Contractor shall perform the required additional approval tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time limit specified in (b) above. All costs related to additional approval tests shall be borne by the Contractor. The Government reserves the right to require an equitable reduction of contract price for any extension of the delivery schedule or for any additional costs to the Government related to additional approval tests.

(d) If the Contractor fails to deliver any first article approval test report within the time or times specified, or if the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract, and this contract shall be subject to termination for default: *provided*, that failure of the Government in such an event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet the delivery schedule for production quantities.

(e) Where the approved first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the first article may be delivered as part of the contract quantity if it meets all terms and conditions of the contract for acceptance.

(f) In the event the Contracting Officer does not approve, conditionally approve, or disapprove the first article within the time specified in (b) or (c) above, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided in the "Changes" clause. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(g) Prior to approval of the first article, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity shall be at the sole risk of the Contractor; and costs incurred on account thereof shall not be allocable to this contract (i) for the purpose of progress payments prior to approval of the first article, if this contract contains the clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government prior to approval of the first article.

(End of clause)

At the option of the contracting officer, the following paragraph may be added to the clause:

(h) The first article offered must be manufactured at the facilities in which that item is to be produced under the contract, or if the first article is a component not manufactured by the Contractor, such component must be manufactured at the facilities in which the component is to be produced for the contract. A certification by the Contractor to this effect must accompany each first article which is offered. (1974 APR)

(b) In accordance with 1-1903, insert the following clause when the Government is responsible for conducting first article approval test:

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (1969 SEP)

(a) The first article is .... unit(s) of Lot/Item .... and shall, within ....(—) calendar days from the date of this contract, be delivered to the Government at .... (*set forth consignee and address*) for first article approval tests. The documentation accompanying the first article shall contain this contract number and the Lot/Item identification. The performance or other characteristics which the first article must meet, and the tests to which it will be subjected, are contained or referenced in this contract.

(b) The Contracting Officer shall, by written notice to the Contractor within ....(—) calendar days after receipt of the first article by the Government, approve, conditionally approve, or disapprove the first article. The notice of approval or conditional approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons therefor.

(c) If the first article is disapproved by the Government, the Contractor may be required, at the option of the Government, to submit an additional first article for first article approval test. After each notification by the Government to submit an additional first article, the Contractor shall at no additional cost to the Government make any necessary changes, modifications, or repairs to the first article, or select another first article for testing. Such additional first article shall be furnished to the Government under the terms and conditions and within the time specified in the notification. The Government shall take action on this first article within the time limit specified in (b) above. The costs of additional first article approval tests and all costs related to such tests shall be borne by the Contractor. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule necessitated by additional first article approval tests.

(d) If the Contractor fails to deliver any first article for test within the time or times specified, or if the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the "Default" clause of this contract, and this contract shall be subject to termination for default; *provided*, that failure of the Government in such an event to terminate this contract for default shall not relieve the Contractor of his responsibility to meet the delivery schedule for production quantities.

(e) Where the first article is not consumed or destroyed in testing, and unless otherwise provided in this contract, the Contractor (i) may deliver an approved first article as a part of the contract quantity if it meets all terms and conditions of this contract for acceptance, and (ii) shall be responsible for removal and disposition of any first article from the Government test site at his expense.

(f) In the event the Contracting Officer does not approve, conditionally approve, or disapprove the first article within the time specified in (b) or (c) above, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates, or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided in the "Changes" clause. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(g) The Contractor shall be responsible for spare parts support and repair of the first article during any first article approval test.

(h) Prior to approval of the first article, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity shall be at the sole risk of the Contractor, and costs incurred on account thereof shall not be allocable to this contract (i) for the purpose of progress payments prior to approval of the first article, if this contract contains the clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government prior to approval of the first article.

(End of clause)

At the option of the contracting officer, the following paragraph may be added to the clause:

(i) The first article offered must be manufactured at the facilities in which that item is to be produced under the contract, or if the first article is a component not manufactured by the Contractor, such component must be manufactured at the facilities in which the component is to be produced for the contract. A certification by the Contractor to this effect must accompany each first article which is offered.(1974 APR)

(c) In accordance with 1-1902(c), the following paragraph may be substituted for paragraph (g) of the clause in (a) above or paragraph (h) of the clause in (b) above.

(g) or (h) Prior to approval of the first article(s), the Contractor may, upon written authorization by the Contracting Officer, acquire specific materials or components or commence production to the extent essential to meet production quantity delivery requirements. Until first article approval is granted, only costs for the first article and costs incurred in accordance with such authorization shall be allocable to this contract (i) for the purpose of progress payments if this contract contains a clause entitled "Progress Payments," or (ii) for the purpose of termination settlements, if this contract is terminated for the convenience of the Government. In the event first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes in, or replace all items manufactured under this contract, at no change in contract price. (1974 APR)

7-104.56 *Reserved.*

7-104.57 *Reserved.*

7-104.58 *Identification of Expenditures in the United States.*

(a) In accordance with 6-804, insert the following clause.

IDENTIFICATION OF EXPENDITURES IN THE UNITED STATES (1966 OCT)

(a) On each invoice, voucher, or other request for payment under this contract, the Contractor shall identify that part of the requested payment which represents estimated expenditures in the

United States. Identification shall consist of stating the full amount of the payment requested, subdivided into the following categories:

1. United States end products—Expenditures for material and equipment manufactured or produced in the United States, excluding transportation;
2. United States services—Expenditures for services performed in the United States, including charges for overhead, other indirect costs, and profit;
3. Transportation on United States carriers—Expenditures for transportation furnished by United States flag, ocean, surface, and air carriers; and
4. Expenditures not identified under 1, 2, and 3 above.

(b) If this contract is principally for supplies or if the Contractor is not an incorporated concern incorporated in the United States, or an unincorporated concern having its principal place of business in the United States, the amounts identified under (a)1, (a)2, and (a)3 above will be limited to payments made pursuant to the requirements either of the "United States Products and Services" clause, if any, or of any other specific provision of this contract that obligates the Contractor to procure certain materials, equipment, transportation, or services from United States sources.

(c) The identification of expenditures required under (a) above may be expressed either as dollar amounts or as percentages applicable to the total amount of the request for payment.

(d) The identification will be based on reasonable estimates by the Contractor. Nothing in this clause requires the establishment or maintenance of detailed accounting records or gives the United States Government any right to audit the Contractor's books or records.

(End of clause)

(b) In lieu of the clause specified in (a) above,, the following statement may be placed prominently on the face of each contract, purchase or delivery order involving procurement of U.S. end products or U.S. services where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable:

U.S. Expenditures for:
U.S. end products — ....% of each invoice.
U.S. services — ....% of each invoice.
Transportation on U.S. carriers — ....% of each invoice.

(c) To provide appropriate reporting of the balance of payments consequences of Defense procurement for contracts of less than $10,000, the following statement will be placed prominently on the face of each contract, purchase or delivery order or other procurement document:

U.S. Expenditures for.
U.S. end products — ....% of each invoice.
U.S. services — ....% of each invoice.
Transportation on U.S. carriers — ....% of each invoice.

7-104.59 *Reserved.*

7-104.60 *Contractor-Furnished Returnable Gas Cylinders and Other Containers.* Insert the following clause in contracts involving the purchase of gas in contractor-furnished returnable cylinders where the contractor retains title to the cylinders. The clause may be used, with appropriate modification, in contracts for other supplies involving reels, spools, drums, carboys, liquid petroleum gas containers, or other reusable containers, where the contractor is to retain title to the containers.

RETURNABLE GAS CYLINDERS (1966 OCT)

(a) Cylinders shall remain the property of the Contractor but will be loaned without charge to the Government for a period of thirty (30) days* after the date of delivery of the cylinders to the f.o.b. point specified in the contract. Beginning with the first day after the expiration of the thirty (30) day loan period to and including the day the cylinders are delivered to the Contractor where the original delivery was f.o.b. origin, or to and including the date the cylinders are delivered or are made available for delivery to the Contractor's designated carrier in the case where the original delivery was f.o.b. destination, the Government shall pay the Contractor a rental of .... dollars ($..........) per cylinder per day, regardless of type or capacity.

* The time period may be modified to comply with the customary commercial practice for the particular type of container being rented.

(b) This rental charge will be computed separately for cylinders of differing types, sizes, and capacities, and for each point of delivery named in the contract. A credit of thirty (30) cylinder days will accrue to the Government for each cylinder, regardless of type or capacity, delivered by the Contractor. A debit of one (1) cylinder day will accrue to the Government for each cylinder for each day after delivery to the f.o.b. point specified in this contract. At the end of the contract, if the total number of debits exceeds the total number of credits, rental shall be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no rental charges will be made for the cylinders. No rental shall accrue to the Contractor in excess of the replacement value per cylinder specified in (c) below.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value as follows, less the allocable rental paid therefor:

(i) oxygen cylinders of 100–110 cubic foot capacity $............;
(ii) oxygen cylinders of 200–220 cubic foot capacity $............;
(iii) acetylene cylinders of 100–150 cubic foot capacity $............; and
(iv) acetylene cylinders of 230–300 cubic foot capacity $............

(d) Cylinders lost, or damaged beyond repair, and paid for by the Government shall become the property of the Government, subject to the following: If any lost cylinder is located within .... (insert period of time) after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with (a) above, beginning at the expiration of the thirty (30) day loan period specified in (a) above, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

7–104.61 *Frequency Authorization.* Any contract which calls for developing, producing, constructing, testing, or operating a device for which a radio frequency authorization is required shall contain the following provision:

FREQUENCY AUTHORIZATION (1966 OCT)

(a) Authorization of radio frequencies required in support of this contract shall be obtained through the Contracting Officer by the Contractor or subcontractor in need thereof. Frequency management procedures prescribed in the Schedule of this contract shall be followed in obtaining radio frequency authorization.

(b) For any experimental, developmental or operational equipment for which the appropriate frequency allocation has not been made, the Contractor or subcontractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device to the Contracting Officer during the initial planning, experimental, or developmental phases of contractual performance. DD Form 1494, "Application for Frequency Allocation," shall be used for this purpose and shall be prepared in accordance with instructions contained on the form.

(c) This clause including this paragraph (c), shall be included in all subcontracts which call for developing, producing, testing, or operating a device for which a radio frequency authorization is required.

(End of clause)

7–104.62 *Material Inspection and Receiving Report.* Insert the following clause in all contracts which anticipate delivery of a separate and distinct object or entity whether separately priced or not.

MATERIAL INSPECTION AND RECEIVING REPORT (1969 DEC)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by ASPR Appendix I, "Material Inspection and Receiving Report."

(End of clause)

However, when contract administration is retained by the purchasing office, the clause is not required in the following situations unless the use of a MIRR is desired by the contracting officer:

(i) procurements effected under Section III, Part 6—Small Purchase and Other Simplified Purchase Procedures;
(ii) negotiated subsistence procurements;
(iii) procurements of fresh milk and related fresh dairy products;
(iv) contracts for which the end item is a scientific or technical report;
(v) research and development procurements not requiring the delivery of separately priced end items;
(vi) base, post, camp or station procurements;
(vii) in overseas areas when the contracting officer determines that the preparation and distribution of DD Form 250 by the contractor would be impracticable, the contracting officer shall arrange for the contractor to provide the information necessary for the preparation of the DD Form 250 by the contract administration personnel; and
(viii) procurements for services where hardware is not acquired as an item in the contract, *e.g.*, level of effort type contracts; field service type contracts, etc.

A MIRR is not required when indefinite delivery type contracts are placed by central procurement offices which authorize only base, post, camp or station activities to issue orders, *provided* that such contract and orders are not assigned for administration.

7–104.63 *Protection of Government Buildings, Equipment and Vegetation.* Insert the following clause in all contracts which involve the performance of services on a Government installation.

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT AND VEGETATION (1968 FEB)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation (such as trees, shrubs, and grass) on the Government installation. If the Contractor fails to do so and damages any such buildings, equipment, or vegetation, he shall replace or repair the damage at no expense to the Government as directed by the Contracting Officer. If he fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost thereof which may be deducted from the contract price.

(End of clause)

7-104.64 *Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology.* In accordance with 1-2403 insert the following clause.

RECOVERY OF NONRECURRING COSTS ON COMMERCIAL SALES (1980 FEB)

(a) Definitions.

(1) *Commercial sale* means a sale to a customer (either foreign or domestic) other than the U.S. Government by a defense contractor of products, technology, material, services, and/or development or production techniques that were originally developed, improved, or produced using DOD appropriations/funds.

(2) *Domestic organization* means any U.S. nongovernmental organization or private commercial firm.

(3) *Technology* means a collection of information of any kind that can be used or adapted for use in the design, production, manufacture, utilization, or reconstruction of articles or materiel. It may take a tangible form, such as as scale model, prototype, blueprint, or an operating manual, or may take an intangible form, such as technical advice.

(4) *Nonrecurring research, development, test, and evaluation (RDT&E) costs* are those costs funded by an RDT&E appropriation to develop or improve the product or technology under consideration. This includes costs of any engineering change proposal initiated prior to date of the contract with the customer, as well as projections of such costs, to the extent additional effort applicable to the sale model or technology is necessary or planned. It does not include costs funded by either Procurement or Operations and Maintenance appropriations to improve the product.

(5) *Nonrecurring production costs* are those one-time costs incurred in support of previous production of the model specified and those costs specifically incurred in support of the total projected production run from which delivery is to be made, which would normally be expensed against a production run. These nonrecurring costs include such costs as preproduction, special tooling, special test equipment, production engineering, product improvement, destructive testing, and pilot model production, testing, and evaluation.

(6) *"Special"RDT&E and nonrecurring production costs* are those incurred for and paid by an FMS customer in developing a special feature or unique requirement under a DOD Offer and Acceptance (DD Form 1513).

(7) *Fair market price of technology*, such as that sold or licensed under a licensing or technical assistant agreement, is a price negotiated between a buyer and seller when the monetary return to the seller is primarily determined by the buyer's need for the technology and the potential market for the product(s) produced from the technology.

(8) *Model* is the generic term applied to a basic item and all modifications to that item. The model can generally be identified by a basic alphanumeric designation, such as a ship hull series, an equipment or system series, an airframe series, or a vehicle series. Recoupment within a model series is identified by determining total nonrecurring investment (RDT&E or production, as appropriate) applicable to that model series and dividing by the total number of units of the model series estimated to be produced for DOD requirements, FMS, and commercial sales.

(9) *Major defense equipment*, as applicable herein, means any item of significant combat equipment on the United States Munitions List having a nonrecurring research and development cost of more than $50 million or a total production cost of more than $200 million.

(b) In the event the Contractor intends to enter into domestic or foreign commercial sales for items in this contract, or essentially similar items, or enter into license or technical assistance agreements for the technology developed under this contract, he shall promptly notify the Contracting Officer (or the original DOD Contracting Office in the event the contract is closed) to obtain the applicable nonrecurring recoupment charge.

(1) The Contractor agrees that, with respect to (2) below, he will:

(i) Reimburse the U.S. Government for a fair share of U.S. Government expenditures for nonrecurring costs applicable to the items, or, in the case of technology, the Government's proportionate share of the fair market price of the technology for the commercial customer. In the event that the current charge is unavailable, the Contractor will submit information required to support the development of the appropriate charge.

(ii) Reimburse a fair share of nonrecurring costs related to a special feature or product paid by a foreign government or international organization under a U.S. Government Foreign Military Sales case when the Contractor enters into a commercial sale or license agreement for the same or similar special feature or product.

7-104.64

(2) The Government will require reimbursement under the provisions of this clause when:

(i) The Government's investment in research, development, test, and evaluation (RDT&E) equals or exceeds $5 million.

(ii) The Government's investment in nonrecurring production costs equals or exceeds $5 million.

(iii) A foreign government's RDT&E and nonrecurring production costs for a special feature or product equal or exceed $5 million (when requested under an FMS case and agreed to by the U.S. Government).

(iv) Reimbursement for investment costs below the thresholds in (i) through (iii) are specifically approved by the Secretary of Defense or his designee.

(3) For each commercial sale of the item, the amount to be reimbursed to the U.S. Government for nonrecurring costs shall be determined by dividing the total nonrecurring costs incurred and projected to be incurred by the total production quantity of the item, past and projected, including the production quantity for the Department of Defense (or FMS purchaser in the case of special feature or product recoupment), and multiplying the result by the quantity involved in each commercial sale or license agreement. In principle, for defense equipment for which several model designators exist, the nonrecurring costs and the total production quantity should be accumulated over the entire range of models and major subsystems that are basically similar to the model and subsystems being sold. In a combination FMS and commercial sale of a product, the Contractor agrees to reimburse the Government for the nonrecurring costs associated with the commercial portion of the customer's purchase.

(4) For each commercial sale of technology, these factors will be considered in determining fair market price: (i) the costs incurred by the Department of Defense in developing the technology being considered for sale; (ii) the costs that would be incurred by the buyer in independently developing the technology; and (iii) the estimated dollar value of the product(s) that will be produced by the buyer upon transfer of the technology. In the case of sale or license of technology to a domestic organization, the fair market price will be the lower of either a fair share of the DOD investment cost identified to the development of the technology or a proportionate share of the fair market price for the technology based on demand or the potential monetary return on investment. For sales or licenses of technology to foreign commercial customers, this price will be the greater of these two alternatives. The foregoing domestic pricing criterion will only be applied if the prospective commercial purchaser agrees that, in the event the

technology is transferred from the prospective purchaser to a foreign recipient prior to its becoming generally available, the domestic purchaser will provide further payment to the Government on the basis of the foreign pricing criterion.

(c) The determination by the Government of the amount to be reimbursed pursuant to this clause shall not be subject to the Disputes clause.

(d) In the case of a commercial sale to a foreign government or international organization that qualifies for U.S. Government Foreign Military Sales, the Contractor agrees to inform his customer that any Defense-furnished goods, services, and transportation (i.e., DOD support costs) can be provided only by means of a Foreign Military Sales case (DOD Offer and Acceptance, DD Form 1513) executed by the U.S. Government and the customer. The foreign government, at its option, may designate the Contractor to act as its agent in executing the Foreign Military Sales case and/or to receive possession or performance of the goods, services, or transportation.

(e) In the event of a commercial sale of items developed under this contract, or essentially similar items, or sale or license of technology relating thereto, the Contractor agrees to relieve the Government for any and all loss or liability that might result from the contractor's use of Government data, tooling, test equipment or facilities.

(f) Notwithstanding the provisions of the clauses of this contract entitled "Patent Rights - Retention by the Contractor" and "Rights in Technical Data and Computer Software," the Contractor agrees that his rights to enter into production for commercial sales of the items or essentially similar items, or to sell or license related technology, are expressly contingent upon compliance with the provisions of this clause, provided that the Secretary of Defense or his designee may waive the Government's rights under this clause, in whole or in part, whenever he determines that such action would be in the best interests of the Government.

(g) The substance of this provision shall be placed in all subcontracts for components, or items which can be sold commercially and which meet, or are expected to meet, the thresholds set forth herein.

(End of clause)

7-104.65 *Insurance.* In accordance with 10-405, insert the following clause.

INSURANCE (1977 JAN)

(a) The Contractor shall, at his own expense, procure and maintain during the entire performance period of this contract insurance of at least the kinds and minimum amounts set forth in the Schedule.

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof to the Contracting Officer.

(c) The Contractor shall also require all first-tier subcontractors who will perform work on a Government installation to procure and maintain the insurance required by the Schedule during the entire period of their performance. The Contractor shall furnish (or assure that there has been furnished) to the Contracting Officer a current Certificate of Insurance meeting the requirements of (b) above for each such first-tier subcontractor, at least five (5) days prior to entry of each such subcontractor's personnel on the Government installation.

(End of clause)

7-104.66 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the following clause.

ACQUISITION AND USE OF EXCESS AND NEAR-EXCESS CURRENCY (1967 DEC)

The Contractor shall not expend United States dollars for the performance of this contract in any of the countries set forth in the Schedule of this contract for the purchase of currency of such countries or for the purchase of goods or services needed for performance under this contract. The Contractor shall purchase all such currencies from United States disbursing officers in such countries at the rates of exchange used by such officers at the times of purchase.

(End of clause)

7-104.67 *Reserved.*

7-104.68 *Reserved.*

7-104.69 *FOB Point of Delivery of Government-Furnished Property.* When Government property is to be furnished under a contract and the Government will be responsible for transportation arrangements and costs, insert the following clause.

F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (1968 JUN)

(a) Unless otherwise specified herein, any Government property furnished to the Contractor for use within the United States (excluding Alaska and Hawaii) or Canada will be delivered by the Government at a point to be specified by the Contractor in his bid (or proposal). Should the Government elect to make delivery by railroad, the f.o.b. point shall be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point shall be railroad cars in the same or nearest city having rail service. All linehaul transportation costs to the specified destination will be borne by the Government. The Government may choose the mode of transportation and the carriers.

(b) If the destination of such Government-furnished property is a Contractor's plant located outside the 48 contiguous states, the District of Columbia and Canada, the f.o.b. point for Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor. If the Contractor fails to name a point, then the f.o.b. point shall be the port city in the United States, nearest to the Government source of the Government-furnished property, which has regular commercial water transportation services to the offshore port nearest Contractor's plant.

(c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which such Government property was originally furnished to the Contractor hereunder. Notwithstanding the fact that the Government may have furnished the property at the Contractor's plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor's plant is located, or, if the Contractor's city is not served by rail service, in the nearest city having rail service. Unless otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

(End of clause)

7-104.70 *FOB Origin.* In accordance with 19-208.2 and 19-208.4(a) or (b), insert the following clause.

F.O.B. ORIGIN (1973 APR)

The Contractor is responsible for delivery to, and for loading, blocking, and bracing the supplies on, the carrier's vehicle; or for delivery to and placement on the carrier's wharf (at shipside, within reach of the ship's loading tackle, when shipping point is within a port area having water transportation service) or the carrier's freight station; or for delivery to the U. S. Postal Service facility; all at Government's option, whichever place of delivery is specified by the Government at the time of shipment. These Contractor responsibilities are specified for performance at the plant or plants at which such supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case they will be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(i) If the Contractor's shipping plant is located in the same city (or county) listed as a destination or port of loading in the contract, the Contractor shall deliver the supplies to that destination or port at his expense and such portion of the contract will be "f.o.b. destination."

(ii) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract will be "f.o.b. destination."

(iii) Notwithstanding (ii) above, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the contractor shall deliver the supplies, at his expense to the container yard in the same or nearest city where seavan container service is available.

(End of clause)

7-104.71 *FOB Destination.* In accordance with 19-208.3, insert the following clause.

F.O.B. DESTINATION (1969 APR)

Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved prior to the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies will be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies will be delivered to truck tailgate at the unloading platform of the consignee. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, he shall assure that the carrier will furnish tailgate delivery if transfer to truck is required to complete delivery to consignee.

(End of clause)

7-104.72 *FOB Origin—Minimum Size of Shipments.* In accordance with 19-208.4(b), insert the following clause.

F.O.B. ORIGIN—MINIMUM SIZE OF SHIPMENTS (1968 JUN)

The Contractor agrees that shipment will be made in carload and truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed in writing by the Contracting Officer. The agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of date of shipment. In the event the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements. This liability shall not attach if supplies are outsized or of such nature they cannot be loaded at the highest minimum weight bracket.

(End of clause)

7-104.73 *Loading, Blocking and Bracing of Freight Car Shipments.* In accordance with 19-211(a), insert the following clause.

LOADING, BLOCKING AND BRACING OF FREIGHT CAR SHIPMENTS (1975 OCT)

Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked and braced by the Contractor in accordance with the standards published at the time of such shipments by the Association of American Railraods. Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier. The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block and brace in accordance with acceptable standards set forth herein. A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

(End of clause)

7-104.74 *Shipments to Ports—Clearance and Documentation Requirements.* In accordance with 19-213.2, insert the following clause.

SHIPMENTS TO PORTS—CLEARANCE AND DOCUMENTATION REQUIREMENTS (1974 APR)

(a) All shipments to water or air ports for transshipment to overseas destinations are subject to the following, unless clearance and documentation requirements have been expressly delegated to the Contractor.

(b) At least ten (10) days prior to shipping cargo to a water port, the Contractor shall obtain an Export Release from the Government transportation office for:

- (i) Each shipment weighing 10,000 pounds or more, and
- (ii) Each shipment weighing less than 10,000 pounds, if the cargo either:
  - (A) is classified TOP SECRET, SECRET, or CONFIDENTIAL,
  - (B) will require exclusive use of a motor vehicle,
  - (C) will occupy full visible capacity of a railway car or motor vehicle,
  - (D) is less than a carload or truckload, but will be tendered as a carload or truckload,
  - (E) is to be shipped to an ammunition outloading port for water shipment; or
- (iii) Each shipment weighing less than 10,000 pounds if the cargo consists of:
  - (A) narcotics,
  - (B) perishable biological material,
  - (C) vehicles to be offered for driveway service,
  - (D) explosives, or other dangerous articles classified as A, B, or C explosives,
  - (E) poisons, classes A, B, or C, or

(F) radioactive material, as defined in Title 49, Code of Federal Regulations, Parts 170–189.

(c) The contractor is cautioned not to order railway cars or motor vehicles for loading until an Export Release has been received.

(d) If the Contracting Officer directs delivery within a shorter period than ten (10) days, the Contractor shall advise the transportation office of the date on which the cargo will be ready for shipment.

(e) At least five (5) days prior to shipping cargo to either a water port or an air port (regardless of the weight, security classification, or the commodity description) the Contractor shall provide the Government transportation office the information shown in (f) below to permit preparation of a Transportation Control and Movement Document (TCMD).

(f) When applying for the Export Release in (b) above or when providing information for preparation of the TCMD (e) above, the Contractor shall furnish:

(i) the proposed date or dates of shipment,
(ii) number and type of containers,
(iii) gross weight and cube of the shipment,
(iv) number of cars or trucks which will be involved,
(v) the Transportation Control Number(s) (TCN) as required for marking under MIL-STD–129, and
(vi) proper shipping name as specified in Title 46, Code of Federal Regulations, Subpart 146.04 - .05, for all items classified as dangerous substances as required for marking under MIL-STD–129.

(g) All movement documents (Government or commercial bills of lading or other delivery documents) shall be annotated by the Contractor with:

(i) the Transportation Control Number, Consignor Code of activity directing the shipment, *i.e.*, cognizant contract administration office, purchasing office when contract administration has been retained, or a contractor specifically delegated MILSTAMP responsibilities in the contract, whichever is appropriate, Consignee Code, and Transportation Priority for each shipment unit.
(ii) Export Release Number and valid shipping period, if stated. (If expired, the Contractor shall request a renewal.) and
(iii) the cubic foot measurement of each shipment unit.

(h) All annotations on the movement documents shall be made in the "Description of Articles" space except, on Government bills of lading the Export Release number and shipping period shall be entered in the space entitled "Traffic Control No.".

(i) The Contractor will (1) mail a copy of the commercial bill of lading or other movement document to the transshipment point and (2) give a copy of the commercial bill of lading or other movement document to the carrier for presentation to the transshipment point with delivery of the shipment.

(End of clause)

7–104.75 *Diversion of Shipment Under FOB Destination Contracts.* **In accordance with 19–215, insert the following clause.**

DIVERSION OF SHIPMENT UNDER F.O.B. DESTINATION CONTRACTS (1971 NOV)

(a) When a place of delivery is changed in accordance with the "Changes" clause of this contract, the contract price shall be adjusted pursuant to that clause for any resulting increase or decrease in the cost of performance. No adjustment shall be made for changes in transportation costs when supplies are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, price adjustments due to changes in transportation costs shall be determined by comparing the cost of:

(i) shipment(s) to the new destination(s) as evidenced by copy of the paid freight bill to be supplied by the Contractor with his invoice; and
(ii) shipment(s) to the original or old destination as evidenced by copy of the appropriate paid freight bill(s) to be supplied by the Contractor, or, in the event no

shipments were made, as evidenced by the applicable rate of a common or contract carrier.

(b) If shipments to the new destination are made by the Contractor owned or leased truck(s) and/or shipments to the original destination were made or would have been made by Contractor owned or leased truck(s), the Contractor shall so certify and, in making an appropriate adjustment in contract prices for payment purposes, a rate equal to 70 percent of the lowest applicable rate published in common carrier tariffs as of the date of shipment shall be substituted by the Government for the Contractor's actual rate or contemplated transportation costs.

(c) If any or all of the following data are not clearly shown on or available from copies of paid freight bills on each diverted shipment, the Contractor shall supply a statement showing:

(i) full name of the carrier or carriers in the routing,
(ii) number of containers,
(iii) gross shipping weight,
(iv) actual date of shipment, and
(v) freight description for the supplies as indicated in the "National Motor Freight Classification" or the "Uniform Freight Classification" (Rail).

(End of clause)

7-104.76 *FOB Destination—Evidence of Shipment.* In accordance with 19-208.3, insert the following clause.

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT (1968 JUN)

If this contract is awarded on an f.o.b. destination basis and if transportation is accomplished by:

(i) common carrier, the Contractor agrees to furnish in support of his invoice, a copy of the signed commercial bill of lading indicating the carrier's receipt of the supplies covered by the invoice for transportation to the destination specified in the contract;
(ii) parcel post, the Contractor agrees to furnish a certificate of mailing with his invoice; and
(iii) other than common carrier or parcel post, the Contractor agrees to attach to his invoice a receipted copy of the appropriate delivery document showing receipt at the destination specified in the contract.

(End of clause)

7-104.77 *Government Delay of Work.*

(a) The clause in (f) below shall be used in all fixed-price supply contracts except that it is optional for use in contracts for commercial items (see 3-807.7(b)) or modified-commercial items. |

(b) The clause provides a means for the fair and expeditious administrative settlement of claims arising out of certain delays and interruptions in the contract work caused by the acts, or failures to act, of the contracting officer where the contract does not otherwise specifically provide for an equitable adjustment because of such delay or interruption (*e.g.*, Government-furnished property, changes, etc).

(c) The clause does not authorize the contracting officer to order a suspension, delay or interruption of the work and it shall not be used as the basis for or to justify such an order.

(d) When the contracting officer has notice of an unordered delay or interruption covered by the clause, he will act to end it or take other appropriate action as soon as practicable.

(e) The contracting officer shall retain in the file a record of all negotiations leading to any adjustment made under the clause, including cost or pricing data.

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(f) The clause:

GOVERNMENT DELAY OF WORK (1968 SEP)

(a) If the performance of all or any part of the work is delayed or interrupted by an act of the Contracting Officer in the administration of this contract, which act is not expressly or impliedly authorized by this contract, or by his failure to act within the time specified in this contract (or within a reasonable time if no time is specified), an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by such delay or interruption and the contract modified in writing accordingly. Adjustment shall be made also in the delivery or performance dates and any other contractual provision affected by such delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption (i) to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an adjustment is provided or excluded under any other provision of this contract.

(b) No claim under this clause shall be allowed (i) for any costs incurred more than twenty (20) days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such delay or interruption, but not later than the date of final payment under the contract.

(End of clause)

7-104.78 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the following clause.

GEOGRAPHIC DISTRIBUTION OF DEFENSE SUBCONTRACT DOLLARS (1978 SEP)

(a) For each subcontract or modification thereof exceeding $10,000, the Contractor agrees to prepare and submit the report on DoD subcontracts in accordance with DD Form 2139.

(b) Negative reports will be submitted annually to the addressee contained on the DD Form 2139, when applicable. Negative reports will be submitted not later than October 31 for the 12-month period ending September 30 of each year. Negative reporting will be continued until the contract or subcontract has been completed and the addressee contained in DD Form 2139 notified of its completion.

(c) The Contractor further agrees to insert the provisions of paragraphs (a) and (b) above in each subcontract in excess of $100,000 except subcontracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs), and subsistence.

(End of clause)

7-104.79 *Safety Precautions for Ammunition and Explosives.*

(a) The following clause shall be inserted in all contracts which may involve the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation, handling, disposal, inspection, repair or any other use of ammunition and explosives. The terms "ammunition" and "explosives" exclude inert components containing no explosives, active chemicals or pyrotechnics. (See 1-323).

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (1970 SEP)

(a) As used in this clause:

(i) "ammunition" and "explosives" shall have the meaning set forth in DoD Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Material, DoD 4145.26M;

(ii) "accident" means an event causing damage or injury involving ammunition or explosives which results in one or more of the following:

(1) one or more fatalities,*

(2) one or more disabling injuries,*
(3) ten or more non-disabling injuries,*
(4) damage to Government property exceeding $10,000,
(5) production interruption exceeding twenty-four (24) hours.

(b) The Contractor shall comply with the DoD Contractor's Safety Manual for Ammunition, Explosives and Related Dangerous Materials (DoD Manual 4145.26M), in effect on the date of the solicitation for this contract, as it relates to ammunition and explosives, and any other additional or more stringent requirements included in the schedule of this contract.** If the Contracting Officer notifies the Contractor of any noncompliance with such Manual, or schedule provisions, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action within the time specified by the Contracting Officer, the Contracting Officer may direct the Contractor to cease performance on all or part of this contract, or until satisfactory corrective action has been taken. Any notification or direction under this paragraph should be in writing or confirmed in writing by the Contracting Officer. The Contracting Officer may at any time remove Government personnel whenever the Contractor is in noncompliance with the safety requirements of this clause. Either action by the Contracting Officer shall not entitle the Contractor to an adjustment of the contract price or other reimbursement for resulting increased costs, or to an adjustment of the delivery or performance schedule. However, should direction to cease performance be issued or Government personnel be removed and it is later determined that the Contractor had, in fact, complied with the Manual, or schedule provisions, the Contractor shall be entitled to an equitable adjustment in delivery schedule, in contract price, or both, in accordance with the procedures provided for in the clause of this contract entitled "Changes."

(c) The Contractor shall immediately notify the Contracting Officer after an accident involving ammunition or explosives. The Contractor shall also, in accordance with this contract or as required by the Contracting Officer, conduct an investigation and submit a written report of the accident to the Contracting Officer.

(d) Neither the requirements of this clause nor any act or failure to act by the Government in surveillance or enforcement thereof shall affect or relieve the Contractor of responsibility for the safety of his personnel and his property and for the safety of the general public in connection with the performance of this contract, or impose or add to any liability of the Government for such safety. The Contractor is not entitled to rely on the requirements of this clause or on any Government surveillance or enforcement thereof, or lack thereof, or granting of any waiver or exemption in accordance with DoD 4145.26M in discharging the Contractor's responsibility.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in every subcontract hereunder which involves ammunition and explosives as defined in (a) above.

(f) Nothing contained herein shall relieve the Contractor from complying with applicable federal, state and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with the performance of this contract.

(End of clause)

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* As defined in American National Standards Institute, Safety Standard, entitled "USA Standard Method of Recording and Measuring Work Injury Experience, Z16.1," in effect on the date of the solicitation.

** The Contracting Officers shall not reference in the schedule of the contract ammunition and explosive safety publications of DoD components in their entirety. Contracting Officers shall select and identify in the schedule of the contract applicable paragraphs or portions of such publications. Where contract performance will occur on a military installation, Contracting Officers may also include necessary regulations of the installation covering ammunition and explosives applicable to performance on the installation.

(b) In contracts involving shipments of ammunition and explosives by military aircraft or to an aerial port of embarkation, insert the following paragraph:

(g) The Contractor shall comply with the requirements for a shipper's certificate set forth in the manual entitled "Packaging and Handling of Dangerous Materials for Transportation by Military Aircraft" (U.S. Government Printing Office Catalog Number D 301.7:71 / 4 / 2, also identified as AFM 71-4 / TM-38-250 / NAVAIR 15-03-500 / MCO P4030.19 / DLAM 4145.3).

7-104.80 *Notice of Radioactive Materials.* Insert the following clause in all contracts for items, components thereof, and materials which are radioactive in which the radioactivity per gram is greater than 0.002 microcuries. Such contracts include, but are not limited to, contracts for aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

NOTICE OF RADIOACTIVE MATERIALS (1974 APR)

(a) The Contractor shall notify the Contracting Officer or his designee, in writing (—*—) days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (i) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, and set forth in Title 10 CFR, in effect on the date of this contract, or (ii) other radioactive material not requiring specific licensing in which the radioactivity per gram is greater than 0.002 microcuries. Such notice shall specify the part or parts of the items which contain such radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (BOB No. 38–R027).

(b) All items, parts or subassemblies which contain radioactive materials in which the radioactivity per gram is greater than 0.002 microcuries and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD-1458 in effect on the date of the contract.

(End of clause)

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that appropriate licenses are obtained or safeguards are taken when licenses are not required.

7–104.81 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* The following clause may be inserted in contracts which involve or are in connection with the manufacture, modification, overhaul or repair of aircraft, missiles, or space launch vehicles.

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (1969 JAN)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled under or in connection with this contract.

(b) If the Government elects to conduct an investigation of the accident, the Contractor will cooperate fully and assist the Government's personnel until the investigation is completed.

(c) The Contractor will include a clause in each of his applicable subcontracts to require subcontractor cooperation and assistance in accident investigation under this clause.

(End of clause)

7–104.82 *Reserved.* |

7-104.83 *Cost Accounting Standards.*

(a)(1) Insert the following clause in all solicitations which are likely to result in a negotiated contract exceeding $100,000, and in all contracts exceeding $100,000, unless exempt in accordance with 3-1204.1(a).

COST ACCOUNTING STANDARDS (1978 MAY)

(a) Unless the Cost Accounting Standards Board has prescribed rules or regulations exempting the Contractor or this contract from standards, rules, and regulations promulgated pursuant to 50 U.S.C. App. 2168 (Public Law 91-379, August 15, 1970), the contractor, in connection with this contract shall:

(1) By submission of a Disclosure Statement, disclose in writing his cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosures must be made prior to contract award unless the Contracting Officer provides a written notice to the Contractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain this Cost Accounting Standards clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside the Government.

(2) Follow consistently the cost accounting practices disclosed pursuant to (1) above in accumulating and reporting contract performance cost data concerning this contract. If any change in disclosed practices is made for purposes of any contract or subcontract subject to Cost Accounting Standards Board requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) below, as appropriate.

(3) Comply with all Cost Accounting Standards in effect on the date of award of this contract or if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any Cost Accounting Standard which hereafter becomes applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(A) Agree to an equitable adjustment as provided in the changes clause of this contract if the contract cost is affected by a change which, pursuant to (3) above, the contractor is required to make to his established cost accounting practices whether such practices are covered by a Disclosure Statement or not.

(B) Negotiate with the contracting officer to determine the terms and conditions under which a change may be made to either a disclosed cost accounting practice or an established cost accounting practice, other than a change made under other provisions of this subparagraph (4): *Provided*, that no agreement may be made under this provision that will increase costs paid by the United States.

(C) When the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (4)(A) above, negotiate an equitable adjustment as provided in the changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if he or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to subparagraphs (a)(1) and (a)(2) above and such failure results in any increased cost paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT. 97, or seven percent (7%) per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable Cost Accounting Standard, rule, or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which he enters into the substance of this clause except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, including the obligation to comply with all Cost Accounting Standards in effect on the date of award of the subcontract or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed certificate of current cost or pricing data. This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on:

(i) established catalog or market prices of commercial items sold in substantial quantities to the general public, or

(ii) prices set by law or regulation and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept the Cost Accounting Standards clause by reason of Section 331.30(b) of Title 4 Code of Federal Regulations (4 CFR 331.30(b)).

NOTE: (1) Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted his Disclosure Statement to a Government Administrative Contracting Officer (ACO) he may satisfy that requirement by certifying to the Contractor the date of such Statement and the address of the ACO.

NOTE: (2) In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to his Contractor or higher tier subcontractor the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of his Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability as provided in paragraph (a)(5) of this clause. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the Cost Accounting Standards Board in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by his subcontractors.

NOTE: (3) If the subcontractor is a business unit which, pursuant to 4 CFR 332 is entitled to elect modified contract coverage and to follow Standards 401 and 402 only, the clause entitled "Disclosure and Consistency of Cost Accounting Practices" set forth in DAR 7-104.83(a)(2) shall be inserted in lieu of this clause.

(e) The terms defined in Section 331.20 of Part 331 of Title 4, Code of Federal Regulations (4 CFR 331.20) shall have the same meanings herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two firms not associated with each other or such Contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

(End of clause)

(a)(2) In accordance with 3-1204.1(b) the following clause shall be inserted in all negotiated solicitations which are likely to result in a negotiated contract exceeding $100,000. The contractor is eligible under the conditions of 4 CFR 332 to use the following clause and so elects pursuant to the instructions in the solicitation notice (7-2003.67(c)), or if the contractor is a foreign concern, the clause below shall be inserted in any resulting contract in lieu of the clause set forth in 7-104.83(a)(1) above.

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (1978 MAY)

(a) The Contractor in connection with this contract, shall:

(1) Comply with the requirements of 4 CFR, Parts 401, Consistency is Estimating, Accumulating and Reporting Costs, and 402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract.

(2) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by regulations of the Cost Accounting Standards Board. The required disclosure must be made prior to contract award unless the Contracting Officer provides a written notice to the contractor authorizing post-award submission in accordance with regulations of the Cost Accounting Standards Board. If the contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside of the Government.

NOTE: (1) Subcontractors shall be required to submit their Disclosure Statements to the Contractor. However, if a subcontractor has previously submitted his Disclosure Statement to a Government Administrative Contracting Officer (ACO), he may satisfy that requirement by certifying to the Contractor the date of such Statement and the address of the ACO.

NOTE: (2) In any case where a subcontractor determines that the Disclosure Statement information is privileged and confidential and declines to provide it to his Contractor or higher tier subcontractor, the Contractor may authorize direct submission of that subcontractor's Disclosure Statement to the same Government offices to which the Contractor was required to make submission of his Disclosure Statement. Such authorization shall in no way relieve the Contractor of liability if he or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any practice disclosed pursuant to this paragraph and such failure results in any increased costs paid by the United States. In view of the foregoing and since the contract may be subject to adjustment under this clause by reason of any failure to comply with rules, regulations, and Standards of the Cost Accounting Standards Board in connection with covered subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Contractor. However, the inclusion of such a clause and the terms thereof are matters for negotiation and agreement between the Contractor and the subcontractor, provided that they do not conflict with the duties of the Contractor under its contract with the Government. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification to be submitted by his subcontractors.

(3) Follow consistently the cost accounting practices disclosed pursuant to (2) above and the established cost accounting practices of the business unit. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement if affected must be amended accordingly. No agreement may be made under this provision that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price of cost allowance, as appropriate, if he or a subcontractor fails to comply with the applicable Cost Accounting Standards or to follow any practice disclosed or established pursuant to subparagraph (a)(2) or (a)(3) above and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased cost to the United States together with interest thereon computed at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, or 7 percent per annum, whichever is less, from the time the payment by the United States was made to the time the adjustment is effected.

(5) When the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice, negotiate an equitable adjustment as provided in the changes clause of this contract.

(b) If the parties fail to agree whether the Contractor has complied with an applicable Cost Accounting Standard, rule or regulation of the Cost Accounting Standards Board and as to any cost adjustment demanded by the United States, such failure to agree shall be a dispute concerning a question of fact within the meaning of the disputes clause of this contract.

(c) The Contractor shall permit any authorized representatives of the head of the agency, of the Cost Accounting Standards Board, or of the Comptroller General of the United States to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts into which he enters the substance of this clause except paragraph (b) of this section, and shall require such inclusion in all other subcontracts of any tier, except that:

(1) If the subcontract is awarded to a business unit which pursuant to Part 331 is required to follow all Cost Accounting Standards, the clause entitled "Cost Accounting Standards" set forth in DAR 7-104.83(a)(1) shall be inserted in lieu of this clause, or

(2) This requirement shall not apply to negotiated subcontracts where the price negotiated is based on:

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public or

(ii) Prices set by law or regulation.

(e) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to accept a Cost Accounting Standards clause by reason of Section 331.30(b) of the Board's regulation.

NOTE: The terms defined in Section 331.20 of Part 331 of Title 4, Code of Federal Regulations (4 CFR 331.20) shall have the same meaning herein. As there defined, "negotiated subcontract" means "any subcontract except a firm fixed-price subcontract made by a Contractor or subcontractor after receiving offers from at least two firms not associated with each other or such Contractor or subcontractor, providing (1) the solicitation to all competing firms is identical, (2) price is the only consideration in selecting the subcontractor from among the competing firms solicited, and (3) the lowest offer received in compliance with the solicitation from among those solicited is accepted."

(End of clause)

(b) *Administration of Cost Accounting Standards.* In accordance with 3-1204, insert the following clause.

ADMINISTRATION OF COST ACCOUNTING STANDARDS (1978 MAY)

For the purpose of administering Cost Accounting Standards requirements under this contract, the Contractor shall:

(a) Submit to the cognizant Contracting Officer a description of the accounting change and the general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts containing the Cost Accounting Standards clause (7-104.83(a)(1)) or the Disclosure and Consistency of Cost Accounting Practices clause (7-104.83(a)(2)):

(i) for any change in cost accounting practices required to comply with a new cost accounting standard in accordance with paragraph (a)(3) and (a)(4)(A) of the clause entitled "Cost Accounting Standards" within sixty (60) days (or such other date as may be mutually agreed to) after award of a contract requiring such change;

(ii) for any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) or (a)(4)(C) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(3) or (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" not less than sixty (60) days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

(iii) for any failure to comply with an applicable Cost Accounting Standard or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraph (a)(4) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices" within sixty (60) days (or such other date as may be mutually agreed to) after the date of agreement of such noncompliance by the Contractor.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within sixty (60) days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to (a)(i), (ii), or (iii) above.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clause entitled "Cost Accounting Standards" or with paragraphs (a)(3), (a)(4), and (a)(5) of the clause entitled "Disclosure and Consistency of Cost Accounting Practices."

(d) When the subcontract is subject to either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices" so state in the body of the subcontract and/or in the letter of award. Self-deleting clauses shall not be used.

(e) Include the substance of this clause in all negotiated subcontracts containing either the clause entitled "Cost Accounting Standards" or the clause entitled "Disclosure and Consistency of Cost Accounting Practices." In addition within thirty (30) days after award of such subcontract submit the following information to the Contractor's cognizant Contract Administration Office for transmittal to the Contract Administration Office cognizant of the subcontractor's facility.

(1) Subcontractor's name and subcontract number.
(2) Dollar amount and date of award.
(3) Name of Contractor making the award.
(4) A statement as to whether the subcontractor has made or proposes to make any changes to

accounting practices that affect prime contracts or subcontracts containing the Cost Accounting Standards clause or Disclosure and Consistency of Cost Accounting Practices clause because of the award of this subcontract unless such changes have already been reported. If award of the subcontract results in making a Cost Accounting Standard(s) effective for the first time, this shall also be reported.

(f) For negotiated subcontracts containing the clause entitled "Cost Accounting Standards", require the subcontractor to comply with all Standards in effect on the date of final agreement on price as shown on the subcontractor's signed certificate of current cost or pricing data or date of award whichever is earlier.

(g) In the event an adjustment is required to be made to any subcontract hereunder, notify the Contracting Officer in writing of such adjustment and agree to an adjustment in the price or estimated cost and fee of this contract, as appropriate, based upon the adjustment established under the subcontract. Such notice shall be given within thirty (30) days after receipt of the proposed subcontract adjustment, or such other date as may be mutually agreed to, and shall include a proposal for adjustment to such higher tier subcontract or prime contract as appropriate.

(h) When either the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause and this clause are included in subcontracts, the term "Contracting Officer" shall be suitably altered to identify the purchaser.

(End of clause)

7-104.84 *Fast Payment Procedure.*

(a) In accordance with 3-606.3, the following clause shall be used in small purchases:

FAST PAYMENT PROCEDURE (1981 MAY)

(a) *General.* This is a fast payment order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the purchase order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, *provided* instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government (one hundred eighty (180) days for overseas shipments).

(c) *Preparation of Invoice.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with Clause 3 of the General Provisions of Purchase Order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. All invoices shall also be prominently marked "Fast Pay."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three (3) years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the Contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters "NO DD 250 PREPARED"; (B) shipment number; (C) mode of shipment; and (D) at line item level, (i) National Stock Number and/or manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract. When a DD Form 250 is not required, the invoice will include the following information: (i) Ship-To-Point, (ii) Mark-For-Point and MILSTRIP document number if in contract, as well as the information in (c)(1) above. In all cases where no DD Form 250 is prepared, a copy of the invoice will be included in each shipment.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited purchase order.

(End of clause)

(b) In accordance with 3–606.2, the following clause shall be used in contracts and delivery orders for (1) brand name commissary resale subsistence and (2) commercial type medical supplies for direct shipment overseas:

FAST PAYMENT PROCEDURE (1981 MAY)

(a) *General.* This is a fast payment contract or order. Invoices will be paid on the basis of the Contractor's delivery to a post office, common carrier, or, in shipment by other means, to the point of first receipt by the Government.

(b) *Responsibility for Supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than post office or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by the Government. Notwithstanding any other provision of the contract or order, the Contractor shall assume all responsibility and risk of loss for supplies (i) not received at destination, (ii) damaged in transit, or (iii) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct such supplies promptly at his expense, *provided*, instructions to do so are furnished by the Contracting Officer within ninety (90) days from the date title to the supplies vests in the Government (one hundred eighty (180) days for overseas shipments).

(c) *Preparation of Invoice.*

(1) Upon delivery of supplies to a post office, common carrier, or in shipments by other means, the point of first receipt by the Government, the Contractor shall prepare an invoice in accordance with the terms of this contract or order, except that invoices under a blanket purchase agreement shall be prepared in accordance with the provisions of the agreement. All invoices shall also be prominently marked "Fast Pay."

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of three (3) years and to furnish such bills to the Government when requested for audit purposes.

(3) In the event this order requires the preparation of a Material Inspection and Receiving Report (DD Form 250), the Contractor has the option of either preparing the DD Form 250 or including the following information on the invoice, in addition to that required in (c)(1) above: (A) a statement in prominent letters **"NO DD 250 PREPARED"**; (B) shipment number; (C) mode of shipment; and (D) at line item level, (i) National Stock Number and/or manufacturer's part number, (ii) unit of measure, (iii) Ship-To-Point, (iv) Mark-For-Point if in contract, and (v) MILSTRIP document number if in contract. When a DD Form 250 is not required, the invoice will include the following information: (i) Ship-To-Point, (ii) Mark-For-Point and MILSTRIP document number if in contract, as well as the information in (c)(1) above. In all cases where no DD Form 250 is prepared, a copy of the invoice will be included in each shipment.

(d) *Certification of Invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that such supplies are in the quantity and of the quality designated by the cited contract or order.

(e) *Fast Pay Container Identification.* All outer shipping containers shall be marked "FAST PAY"

(End of clause)

7-104.85 *FOB Origin — Bills of Lading.* F.O.B. origin contracts shall include one of the following clauses in accordance with 19-403.3(b) and (c).

(a) *F.O.B. Origin — Government Bills of Lading and Prepaid Postage.* In accordance with 19-403.3(c), F.O.B. origin contracts, except those utilizing the Fast Payment Procedure clause, shall include the following clause:

F.O.B. ORIGIN — GOVERNMENT BILLS OF LADING AND PREPAID POSTAGE (1977 DEC)

F.O.B. origin shipments shall be made on Government bills of lading or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system as appropriate, with postage costs prepaid by the Contractor. Any direct charge for postage costs will be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by contractors is not authorized. Quantities will not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation. In the absence of other arrangements, Government bills of lading can be obtained by completing and submitting DD Form 1659, "Application for United States Government Bill of Lading / Export Traffic Release". Unless otherwise directed, the Contractor shall address overseas parcel post to the ultimate consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

(b) *F.O.B. Origin — Government Bills of Lading and Mail Indicia.* In accordance with 19-403.3(b), F.O.B. origin contracts, except those utilizing the Fast Payment Procedure clause, shall include the following clause:

F.O.B. ORIGIN — GOVERNMENT BILLS OF LADING AND MAILING INDICIA (1973 APR)

F.O.B. origin shipments shall be made on Government bills of lading or, if the supplies are mailable, via the U. S. Postal System, on "Postage and Fees Paid" indicia labels. Quantities will not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation. When shipments are mailed via the postal system of a foreign country, postal charges shall be prepaid and added as a separate item on the invoice. In the absence of other arrangements, Government bills of lading can be obtained by completing and submitting DD Form 1659, "Application for United States Government Bill of Lading/Export Traffic Release". DD Form 1659 and/or "Postage and Fees Paid" indicia labels may be obtained from the Contract Administration Office. Unless otherwise directed, the Contractor shall address overseas parcel post to the ultimate consignee in care of a designated Army or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity officer at a CONUS water or aerial terminal for transshipment.

(End of clause)

7-104.86 *Notification of Changes.* Following is an example of a clause for use in accordance with 26-802:

NOTIFICATION OF CHANGES

(a) *Definitions.* As used in this clause, (i) the term "Contracting Officer" does not include any representative of the Contracting Officer whether or not such representative is acting within the scope of his authority, and (ii) the term "specifically authorized representative" means any person the Contracting Officer has so designated by written notice which shall refer to this subparagraph and shall be issued to the designated representative prior to his invocation of such authority (and a copy of which shall be provided to the Contractor).

(b) *Notice.* The primary purpose of this clause is to obtain prompt reporting of Government conduct which the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, and in any event within ....* (**to be negotiated*) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) which the Contractor regards as a change to the contract terms and conditions. The Notice shall state, on the basis of the most accurate information available to the Contractor:

- (i) the date, nature, and circumstances of the conduct regarded as a change;
- (ii) the name, function, and activity of each Government individual and contractor official or employee involved in or knowledgeable about such conduct;
- (iii) the identification of any documents and the substance of any oral communication involved in such conduct;
- (iv) in the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;
- (v) the particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including:
  - (1) what contract line item(s) have been or may be affected by the alleged change,
  - (2) what labor or materials or both have been or may be added, deleted, or wasted by the alleged change;
  - (3) to the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;
  - (4) what adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated;

  and
- (vi) the Contractor's estimate of the time by which the Government must respond to the Contractor's notice to minimize cost, delay or disruption of performance.

(c) *Continued Performance.* Following submission of the notice required by (b) above, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless such notice reports a direction of the Contracting Officer or a communication from a specifically authorized representative of the Contracting Officer, in either of which events the Contractor shall continue performance in compliance therewith, *provided,* however, that if the Contractor regards the direction or communication as a change as described in (b) above, notice shall be given as therein provided. All directions, communications, interpretations, orders and similar actions of such specifically authorized representative shall be reduced to writing promptly and copies thereof furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the specifically authorized representative.

(d) *Government Response.* The Contracting Officer shall promptly, and in any event within ....* (***to be negotiated*) calendar days after receipt of **NOTICE,** respond thereto in writing. In such response the Contracting Officer shall either,

- (i) confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance,
- (ii) countermand any communication regarded as a change,
- (iii) deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

  or
- (iv) in the event the Contractor's notice information is inadequate to make a decision under (i), (ii), or (iii) above, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable Adjustments.* If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and such conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made.

(i) in the contract price or delivery schedule or both; and

(ii) in such other provisions of the contract as may be affected;

and the contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with such defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer pursuant to this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in (b) and (c) above.

NOTE: The phrases "contract price" and "cost" wherever they appear in the foregoing clause, may be appropriately modified to apply to cost-reimbursement or incentive type contracts, or to combinations thereof.

(End of clause)

7-104.87 *Cost/Schedule Control Systems.* In accordance with 1-331(h), insert the following clause:

COST/SCHEDULE CONTROL SYSTEMS (1979 MAR)

(a) The Contractor shall establish, maintain and use in the performance of this contract Cost/Schedule Control Systems meeting the attached criteria (DODI 7000.2 Performance Measurement for Selected Acquisitions). Prior to acceptance by the Contracting Officer and within ninety* (90) (**or as otherwise agreed to by the parties*) calendar days after contract award, the Contractor shall be prepared to demonstrate the operation of his systems to the Government to verify that the proposed systems meet the established criteria set forth above. As a part of the demonstration, review and acceptance procedure, the Contractor shall furnish the Government a description of the Cost/Schedule Control Systems applicable to this contract in such form and detail as indicated by the AFSCP/AFLCP 173-5, DARCOM-P 715-5, NAVMAT P-5240 Cost Schedule Control Systems Criteria Joint Implementation Guide hereinafter referred to as the guide, or required by the Contracting Officer. The Contractor agrees to provide access to all pertinent records, data and plans as requested by representatives of the Government for the conduct of the review.

(b) The description of the management systems accepted by the Contracting Officer, identified by title and date, shall be referenced in the contract. Such systems shall be maintained and used by the Contractor in the performance of this contract.

(c) Contractor changes to the accepted systems shall be submitted to the Contracting Officer for review and approval. The Contracting Officer shall advise the Contractor of the acceptability of such changes within sixty (60) days after receipt from the Contractor. When systems existing at time of contract award do not comply with the criteria, adjustments necessary to assure compliance will be effected at no change in contract price or fee.

(d) The Contractor agrees to provide access to all pertinent records and data requested by the Contracting Officer or his duly authorized representative for the purpose of permitting Government surveillance to insure continuing application of the accepted systems to this contract. Deviations from accepted systems discovered during contract performance shall be corrected as directed by the Contracting Officer.

(e) The Contractor shall require that each selected subcontractor, as mutually agreed to between the Government and the Contractor and as set forth in the schedule of this contract, shall meet the Cost/Schedule Control Systems criteria as set forth in the guide and shall incorporate in all such subcontracts adequate provisions for demonstration, review, acceptance and surveillance of subcontractors' systems, to be carried out by the Government when requested by either the prime or subcontractor.

(f) If the Contractor or subcontractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, the Contracting Officer may waive all or part of the provisions hereof concerning demonstration and review.

(End of clause)

7-104.88 *Advertising and Coupon Redemption for Military Resale Activities.* To preclude any implied endorsement by military resale activities of commercially advertised products, insert the following clause in all solicitations and resulting contracts for supplies purchased for resale.

ADVERTISING AND COUPON REDEMPTION FOR MILITARY RESALE ACTIVITIES (1974 APR)

The Contractor will not represent in any manner, expressed or implied, that the products purchased hereunder are approved or endorsed by any element of the United States Government. Any advertisement by the Contractor, including price-off coupons, which refers to a military resale activity shall contain the following statement:

> "This advertisement is neither paid for nor sponsored, in whole or in part, by any element of the United States Government."

(End of clause)

7-104.89 *Engineering Change Proposals (ECP's).* In accordance with 26-205, the following is a sample clause:

ENGINEERING CHANGE PROPOSALS

(a) The Contracting Officer may at any time, in writing, request the Contractor to prepare and submit an Engineering Change Proposal (ECP) as that term is defined in MIL-STD-480, within the scope of this contract, as hereafter set forth. Upon receipt of such request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by paragraph 4 of, MIL-STD-480.

(b) Any Contractor ECP shall set forth a "not to exceed" price* and delivery adjustment or a "not less than" price* and delivery adjustment, acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than, such "not to exceed" or "not less than" amounts.** This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraph 4.10 and 4.11 of MIL-STD-480. Concurrently with the submission of any ECP under this contract in which the proposed aggregate cost is $100,000 or greater, the Contractor shall submit to the Contracting Officer a completed DD Form 633-5. At the time of agreement upon the price of the ECP, the Contractor shall submit a signed Certificate of Current Cost or Pricing Data.

(End of clause)

The Contracting Officer may include, in the circumstances in 26-205(b), the following paragraph.

(c) If the price * adjustment proposed for any Contractor-originated ECP (excluding any Government-requested ECP or Value Engineering Change Proposal) is *** (percent of the contract price *) (or $ ***) or less, such change shall be made at no adjustment of the contract price *.

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* Use term suitable to type of contract.

** In cost-reimbursement type contracts, replace this sentence with the following sentence.

Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

*** To be negotiated.

7-104.90 *Change Order Accounting.* In accordance with 26-205, the following is a sample clause:

CHANGE ORDER ACCOUNTING

When the Contracting Officer estimates that the cost of a change or series of related changes will exceed $100,000, he may require change order accounting. The Contractor, for each such change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits), of work, both changed and not changed, allocable to the change. Such accounts shall be maintained until the parties agree to an equitable adjustment for the change order.

(End of clause)

7-104.91 *Contracts Conditioned Upon the Availability of Funds.* In accordance with 1-318, insert one of the following clauses:

(a) *Availability of Funds.*

AVAILABILITY OF FUNDS (1962 SEP)

Funds are not presently available for this procurement. The Government's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money shall arise unless and until funds are made available to the Contracting Officer for this procurement and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

(End of clause)

(b) *Availability of Funds for Next Fiscal Year.*

AVAILABILITY OF FUNDS FOR NEXT FISCAL YEAR (1975 JUN)

Funds are not presently available for performance under this contract beyond .... The Government's obligation for performance of this contract beyond this date is contingent upon the availability of appropriated funds from which payment for the contract purposes can be made. No legal liability on the part of the Government for payment of any money for performance under this contract beyond .... shall arise unless and until funds are made available to the Contracting Officer for such performance and notice of such availability, to be confirmed in writing by the Contracting Officer, is given to the Contractor.

(End of clause)

7-104.92 *Time of Delivery.*

(a) Policy and procedures regarding time of delivery are set forth in 1-305. Examples of time of delivery clauses for invitations for bids are set forth below. They may be modified or other clauses may be used to state particular delivery requirements or any special procedures to be used in the evaluation, rejection or award process as regards time of delivery. These clauses also may be suitably modified for use in negotiated procurements when appropriate.

(b) The following clause may be used when delivery by a particular time is necessary to meet the Government's requirements and the delivery schedule is to be based on the date of the contract.

TIME OF DELIVERY (1974 APR)

(a) Delivery is REQUIRED to be made in accordance with the following schedule:

ITEM NO.	QUANTITY	TIME (within the number of days stated below after date of contract.)
....	....	....
....	....	....
....	....	....

Bids offering delivery of each quantity within the applicable delivery period specified above will be evaluated equally as regards time of delivery. Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected. When a bidder offers an earlier delivery schedule than that called for above, the Government reserves the right to award either in accordance with the REQUIRED schedule or in accordance with the schedule offered by the bidder. If the bidder offers no other delivery schedule, the delivery schedule stated above shall apply.

BIDDERS PROPOSED DELIVERY SCHEDULE

(To be Completed by Bidder)

ITEM NO.	QUANTITY	TIME (within the number of days stated below after date of contract.)
....	....	....
....	....	....
....	....	....

(b) Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provide that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the Contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding five days for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected.

(End of clause)

(c) The following clause may be used when delivery by a certain time is DESIRED, but not essential, and delivery by a specified later time is necessary to meet the Government's requirements and the delivery schedule is to be based on the date of the contract:

TIME OF DELIVERY (1974 APR)

(a) Delivery is DESIRED by the Government in accordance with the following schedule:

ITEM NO.	QUANTITY.	TIME (within the number of days stated below after date of contract.)
....	....	....
....	....	....
....	....	....

If the bidder is unable to meet the above delivery schedule, he may, without prejudice to the evaluation of his bid, set forth his Proposed Delivery Schedule below but such delivery schedule must NOT extend the delivery period beyond the time for delivery called for in the following REQUIRED delivery schedule set forth below:

REQUIRED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	TIME (within the number of days stated below after date of contract.)
....	....	....
....	....	....
....	....	....

Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable REQUIRED delivery period specified above will be considered nonresponsive and will be rejected.

If the bidder does not propose a different delivery schedule, the Government's DESIRED delivery schedule shall apply.

BIDDERS PROPOSED DELIVERY SCHEDULE

(To be completed by Bidder)

ITEM NO.	QUANTITY	TIME (within the number of days stated below after date of contract.)
....	....	....
....	....	....
....	....	....

(b) Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the Contractor of the contract or notice of award (rather than the contract date) will be evaluated by adding five days for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected.

(End of clause)

(d) The time for delivery may also be expressed as follows in lieu of "within the number of days stated below after date of contract" as shown in the clauses in (a) and (b) above:

- (i) "On (on or before) the date(s) specified below."
- (ii) "Within the number of days stated below after the date of receipt of a written notice of award."
- (iii) "Within the periods specified below." (Note: When this phrase is inserted, the wording "during the month(s) of ...." or "not sooner than .... and not later than ...." should be used to specify the periods.)

(e) When the delivery schedule is in terms of specific calendar dates ((d)(1) or (d)(3) above), invitations for bids shall include one of the following paragraphs in lieu of (b) of the clauses in (b) and (c) above:

> (1)(b) The foregoing delivery requirements are based on the assumption that the Government will make award by (*purchasing activity, insert calendar date*). Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 10(d) of the Solicitation Instructions and Conditions, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails. (1974 APR)
>
> (2)(b) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by (*purchasing activity, insert calendar date*). The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges such receipt. (1974 APR)

(f) When the delivery schedule is based on the date of receipt of a written notice of award ((d)(ii) above), paragraph (b) of the clauses in (b) and (c) above shall be deleted.

7-104.93 *Preference for Domestic Specialty Metals.*

(a) The following clause shall be included in all contracts over $10,000 that call for the delivery to the Government of an article containing specialty metals within the following six major classes of programs: aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition.

> PREFERENCE FOR DOMESTIC SPECIALTY METALS (MAJOR PROGRAMS) (1980 OCT)
>
> (a) The Contractor agrees that any specialty metals (as hereinafter defined) incorporated in articles delivered under this contract will be melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee has determined that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.
>
> (b) For the purposes of this clause, the term "specialty metals" means:
>
> (i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;
>
> (ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);
>
> (iii) titanium and titanium alloys; or
>
> (iv) zirconium and zirconium base alloys.
>
> (c) The Contractor agrees to include this clause, including this paragraph (c), in every subcontract or purchase order issued hereunder unless he knows that the item being purchased contains no specialty metals.
>
> (End of clause)

(b) The following clause shall be included in all contracts over $10,000, other than those covered by the clause in paragraph (a), calling for the delivery of an article that contains specialty metals.

PREFERENCE FOR DOMESTIC SPECIALTY METALS (1980 OCT)

(a) The Contractor agrees that any specialty metals (as hereinafter defined) furnished by it or purchased by it for direct incorporation in any article delivered to the Government under this contract shall have been melted in the United States, its possessions, or Puerto Rico; *Provided*, That this clause shall have no effect to the extent that (i) the Secretary or his designee determines that a satisfactory quality and sufficient quantity of such articles cannot be acquired as and when needed at U.S. market prices; (ii) the acquisition is for a qualifying country end product; or (iii) the acquisition is necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purpose of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements.

(b) For the purposes of this clause, the term "specialty metals" means:

(i) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;

(ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of ten percent (10%);

(iii) titanium and titanium alloys; or

(iv) zirconium and zirconium base alloys.

(End of clause)

7-104.94 *Capture and Detention*. In accordance with 10-406, insert the following clause.

CAPTURE AND DETENTION (1968 JUN)

(a) As used in this clause:

(1) "captured person" means any employee of the Contractor—

(i) who is assigned to duty outside the United States for the performance of this contract, and

(ii) who is found to be missing from his place of employment under circumstances that make it appear probable that his absence is due to the action of the force of any power not allied with the United States in a common military effort, or who is known to have been taken prisoner, hostage or otherwise detained by the force of any such power, whether or not such person is actually engaged in his employment at the time of capture; provided that at the time the person was captured and detained that the person was either:

(A) engaged in activity directly arising out of the course of his employment under this contract, or

(B) captured in an area in which the captured person was present only because such presence was required in order to perform this contract;

(2) a "period of detention" begins with the day of capture and continues until the captured person is returned to his place of employment, or to the United States, or is able to be returned to the jurisdiction of the United States, or until his death is in fact established or legally can be presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever shall occur first;

(3) "United States" comprises geographically the fifty states and the District of Columbia; and

(4) "War Risk Hazards Compensation Act" refers to the statute compiled in Chapter 12 of Title 42 U.S. Code (Sections 1701 - 1717), as amended.

(b) If pursuant to an agreement entered into prior to the capture, the Contractor is obligated to pay and shall have paid benefits to a captured person, or his dependents, on account of his detention, the Government will reimburse the Contractor for such payments up to an amount which will equal the lesser of (i) the total wage or salary (computed at the rate being paid at the time of capture) due from the Contractor to the captured person for the period of detention, or (ii) that amount which would have been payable to such person if the detention had occurred under circumstances wherein the benefit provisions of the War Risk Hazards Compensation Act would have been applicable.

(c) The period of detention shall not be considered as time spent in the performance of this contract, and the Government shall not be obligated to make payment under this contract on account of such person for the period of the detention except as provided in this clause.

(d) The obligation of the Government to make payments provided for by this clause shall be applicable to the entire period of detention except that it is expressly conditioned upon and subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive the earlier expiration, completion or termination of this contract.

(e) The Contractor shall not be reimbursed under the provisions of this clause for payments made to employees for a period of detention during which the employees were entitled to compensation for capture and detention under the War Risk Hazards Compensation Act, as amended.

(End of clause)

7–104.95 *Preference for United States Flag Air Carriers.* In accordance with 1–336.1(b), insert the following clause.

PREFERENCE FOR UNITED STATES FLAG AIR CARRIERS (1975 NOV)

(a) Public Law 93–623 requires that all Federal agencies and Government Contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for international air transportation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.

(b) The Contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.

(c) In the event that the Contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

> **CERTIFICATION OF UNAVAILABILITY OF U.S. FLAG AIR CARRIERS**
>
> I hereby certify that transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reasons:*
> (*state reasons*)
>
> (end of certification)

(d) The terms used in this clause have the following meanings:

- (i) "*International air transportation*" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.
- (ii) "*U.S. flag air carrier*" means one of a class of air carriers holding a certificate of public convenience and necessity issued [illegible] the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.
- (iii) The term "*United States*" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States and the District of Columbia.

(e) The Contractor shall include the substance of this clause, including this paragraph (e) in each subcontract or purchase hereunder which may involve international air transportation.

*(*See Armed Services Procurement Regulation 1–336.2 and Federal Procurement Regulation 41 CFR 1–1.323–3.*)

(End of clause)

7-104.96 *Privacy Act.* In accordance with 1-327, the following clause shall be included in every solicitation and resulting contract, and in every contract awarded without a solicitation, when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function.

PRIVACY ACT (1975 NOV)

(a) The Contractor agrees:

(1) to comply with the Privacy Act of 1974 and the rules and regulations issued pursuant to the Act in the design, development, and/or operation of any system of records on individuals in order to accomplish an agency function, when the contract specifically identifies (i) the system or systems of records and (ii) the work to be performed by the Contractor in terms of any one or combination of the following: (A) design, (B) development, or (C) operation;

(2) to include the solicitation notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the statement of work in the proposed subcontract requires the design, development, or operation of a system of records on individuals to accomplish an agency function.

(3) to include this clause, including this paragraph (3), in all subcontracts awarded pursuant to this contract which require the design development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the contractor and any employee of the contractor is considered to be an employee of the agency.

(c) The terms used in this clause have the following meanings:

(1) "*Operation of a system of records*" means performance of any of the activities associated with maintaining the system of records including the collection, use, and dissemination of records.

(2) "*Record*" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(3) "*System of records*" on individuals means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

7-104.97 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the following clause.

EXCLUSIONARY POLICIES AND PRACTICES OF FOREIGN GOVERNMENTS (1977 JAN)

No person, partnership, corporation, or other entity performing functions pursuant to this contract, shall, in employing or assigning personnel to participate in the performance of any such function, whether in the United States or abroad, take into account the exclusionary policies or practices of any foreign government where such policies or practices are based on race, religion, national origin, or sex.

(End of clause)

7-104.98 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2, insert the following clause in all contracts requiring the delivery of hazardous materials, or under which the performance of work, use, handling, manufacture, packaging, transportation, storage, inspection or disposal of, or any other use which will involve exposure to such hazardous material as defined in Federal Standard No. 313A ("Material Safety Data Sheet, Preparation and Submission of"). For safety precautions for ammunition and explosives, see 1-323.1.

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (1977 OCT)

(a) As used in this clause, *hazardous material* shall be as defined in Federal Standard No. 313A ("Material Safety Data Sheet, Preparation and Submission of"), in effect on the date of this contract.

(b) The Contractor shall prepare and submit Material Safety Data Sheet (Form OSHA-20 (DoD)) in accordance with Federal Standard No. 313A for all hazardous material, whether or not listed in Appendix A of the Standard, delivered pursuant to this contract or for which performance of work, use, handling, manufacture, packaging, transportation, storage, inspection or disposal of, or any other use after delivery to the Government designated destination will involve exposure to hazardous materials or items containing such materials. Material Safety Data Sheets shall be submitted five (5) days prior to delivery of the material.

(c) The requirements of this clause, or any act or failure to act by the Government in surveillance or enforcement of this clause, shall not affect or relieve the Contractor of any responsibility or liability for the safety of Government or Contractor personnel or property, or of any subcontractor or vendor personnel.

(d) Nothing contained in this clause shall relieve the Contractor from complying with applicable federal, state, and local laws, codes, ordinances and regulations (including the obtaining of licenses and permits) in connection with hazardous material in the performance of this contract.

(e) *Government's rights in data furnished under this contract with respect to hazardous material:*

(i) The Government shall have the right to use, duplicate and disclose any data to which this clause is applicable for the purposes of apprising personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials and for medical treatment of those affected by such material, and to have others use, duplicate, and disclose such data for the Government for such purposes.

(ii) Such data shall not be duplicated, or disclosed, or released outside the Government, in whole or in part for any procurement or manufacturing purpose, if the following legend is marked on each piece of data to which this clause is applicable:

> "This is furnished under United States Government Contract No. .... and shall not be used, duplicated or disclosed for any procurement or manufacturing purpose without the permission of .... This legend shall be marked on any reproduction hereof."
>
> (End of legend)

(iii) The Contractor shall not place the legend set forth above or any other restrictive legend on any data which the Contractor or any subcontractor previously delivered to the Government without limitations or which should be delivered without limitations under the conditions prescribed by the "*Rights in Technical Data and Computer Software*" clause of ASPR 7-104.9(a).

(iv) Notwithstanding any other provision of this contract providing for rights in data, the rights of the Government to use, duplicate, and disclose data furnished pursuant to the requirements of this clause shall be as provided by this clause. The Government is not precluded from using similar or identical data acquired from other sources.

(f) The Contractor shall insert this clause, including this paragraph (f), with appropriate changes in the designation of the parties, in any subcontract of any tier (including purchase designations or purchase orders) hereunder which involves hazardous material.

(End of clause)

7-104.99 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35 in all fixed-price incentive contracts and contracts providing for price redetermination.

7-104.100 *Certificate of Conformance.* In accordance with 14-306(c), insert the following clause.

CERTIFICATE OF CONFORMANCE (1979 MAR)

Unless required otherwise in the contract or by the CAO, the Contractor is required to deliver the supplies to be furnished hereunder with a "Certificate of Conformance." In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. The Contractor signed certificate shall be attached to or included on the top copy of the DD 250 or 1155 copies distributed to the payment office. When acceptance is at destination, a copy of the signed certificate shall also be attached to or entered on copies of the DD 250, DD 1155, or other appropriate documents accompanying the shipment. This certificate shall read as follows: "I hereby certify that on

__________________ the __________________________ provided
(Date) (Contractor's Name)
the supplies called for by Contract No. ______________
via ____
(Carrier)
on ______________________________________ in accord-
(Bill of Lading or Shipping Document)
ance with all applicable requirements for shipment. I further certify that the supplies are of the quality specified and are in all respects in conformance with the contract requirements, including specifications and/or drawings,,preservation, packaging, packing and marking requirements; physical item identification (part number), and in the quantity shown on this, or the attached acceptance document."

Date of Execution: ___________________________
Signature ________________________________
Title ___________________________________

(End of Clause)

7-104.101 Reserved.

7-104.102 *Certification of Requests for Adjustment or Relief Exceeding $100,000.* In accordance with 1-342, insert the following clause.

CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000 (1980 FEB)

(a) Any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or other similar request exceeding $100,000 shall bear, at the time of submission, the following certificate given by a senior company official in charge at the plant or location involved:

I certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(Official's Name)

(Title)

(b) The certification in paragraph (a) requires full disclosure of all relevant facts, including cost and pricing data.

(c) The certification requirement in paragraph (a) does not apply to:

(i) requests for routine contract payments—for example, those for payment for accepted supplies and services, routine vouchers under cost reimbursement-type contracts, and progress payment invoices;

(ii) final adjustments under incentive provisions of contracts;

(d) In those situations where no claim certification for the purposes of Section 813 has been submitted prior to the inception of a contract dispute, a single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, will be deemed to comply with both statutes.

(End of clause)

7-104.103 *Delivery of Excess Quantities of $100 or Less.* The following clause may be inserted in contracts for supplies:

DELIVERY OF EXCESS QUANTITIES OF $100 OR LESS (1980 DEC)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to $100 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of $100 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

7-104.104 *Reserved.*

7-104.105 *Offset Arrangement.* When appropriate in accordance with 6-1310.3(d), insert a clause substantially as follows.

OFFSET ARRANGEMENT (1980 OCT)

(a) The Contractor is responsible under the contract for arranging with representatives of the Government of . . . .* under . . . .** dated . . . . . . for participation by sources in . . . .* for a minimum of *(percentage or dollar value)* of the value of this prime contract. This offset requirement may be fulfilled either by subcontracts under this contract or through other business the Contractor may choose to place in . . . .* (Commercial business will not be considered for duty-free entry.) All contractual arrangements to be entered into in accordance with this clause must be submitted to the Contracting Officer for determination as to whether such arrangements fulfill the offset requirement. Special conditions relating to the offset requirement are as follows:

. . . .
. . . .

(b) The Contractor will provide the following information to the Contracting Officer within 30 calendar days after the completion of each calendar quarter during the term of the contract:

(i) subcontract or other solicitations offered to . . . .* industry (items, dollar value, date of solicitation, and identification of sources);

(ii) subcontract or orders placed with . . . .* sources—
  - (A) item
  - (B) value
  - (C) contracting office
  - (D) competitive or noncompetitive
  - (E) date of subcontract
  - (F) identification of subcontractor

(iii) status of deliveries under subcontracts placed with . . . .* sources.

(c) None of the provisions of this clause shall relieve the Contractor of the need to comply with the International Traffic in Arms Regulations, the Industrial Security Manual, or other laws and regulations governing foreign acquisition and disclosure of information to foreign nationals.

(d) The substance of this provision shall be placed in all subcontracts awarded to U.S. companies which appear to offer a significant opportunity for lower tier subcontracting with . . . .* sources under . . . .**

---

*Insert name of foreign country.
**Insert offset agreement number or other description.

(End of clause)

7-104.106 *Qualifying Country Sources as Subcontractors.* Insert the following clause in accordance with 6-104.5 and 6-803.1(e) whenever the Buy American Act and Balance of Payments Program clause at 7-104.3 is used in the solicitation or contract.

QUALIFYING COUNTRY SOURCES AS SUBCONTRACTORS (1980 OCT)

No qualifying country source (6-001), subject to the restrictions set forth in Section VI, Part 14, or U.S. source is to be precluded from competing for subcontracts.

(End of clause)

7-104.107 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the following clause.

LIMITATION ON SALES COMMISSIONS AND FEES FOR FOREIGN GOVERNMENTS (1980 OCT)

Unless the sales commission and fee have been identified and payment thereof has been approved in writing by the Government of . . . .* before contract award, the following provisions, as appropriate, shall apply.

(a) For firm fixed-price contracts or fixed-price contracts with economic price adjustment:

> "The Contractor certifies that the contract price (including any subcontracts awarded hereunder) does not include any direct or indirect costs of sales commissions or fees for contractor sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of . . . .*"

---

*Name of foreign country.

(b) For all other types of contracts:

"Notwithstanding any other provision of this contract, any direct or indirect costs of sales commissions or fees for contractor (or subcontractor) sales representatives for the solicitation or promotion or otherwise to secure the conclusion of the sale of any of the supplies or services called for by this contract to the Government of . . . .* shall be considered as an unallowable item of cost under this contract."

---

*Name of foreign country.

(End of clause)

7-105 Additional Clauses. The following clauses shall be inserted in fixed-price supply contracts in accordance with departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-105.1 *Alterations in Contract.*

(a)

ALTERATIONS IN CONTRACT (1949 JUL)

The following alterations have been made in the provisions of this contract.

(End of clause)

(b)

ALTERATIONS IN STANDARD FORM 32 (1976 OCT)

Standard Form 32, General Provisions (Supply Contract) is hereby altered by substituting the following ASPR clauses in effect on the date of this solicitation:

a. *Title and Risk of Loss* (7-103.6) for Clause 6;
b. *Notice and Assistance Regarding Patent and Copyright Infringement* (7-103.23) for Clause 13;
c. *Buy American Act* (7-104.3) for Clause 14;
d. *Convict Labor* (7-104.17) for Clause 15; and
e. *Contract Work Hours and Safety Standards Act — Overtime Compensation* (*7-103.16*) for Clause 16.

(End of clause)

7-105.2 *Approval of Contract.*

APPROVAL OF CONTRACT (1949 JUL)

This contract shall be subject to the written approval of .... or his duly authorized representative and shall not be binding until approved.

(End of clause)

7-105.3 *Stop Work Orders.*

(a) *Use of Clause.* The clause set forth in (c) below is authorized for use in any negotiated fixed-price type contract under which work stoppage may be required for reasons such as advancements in the state of the art, production or engineering breakthroughs, or realignment of programs.

(b) *Use of Orders.* (1) Inasmuch as stop work orders may result in increased costs to the Government by reason of standby costs, such orders will be issued only with prior approval at a level above the contracting officer. Generally, use of a stop work order will be limited to those situations where it is advisable to suspend work pending such a decision by the Government and a supplemental agreement providing for such suspension is not feasible. A stop work order will not be used in lieu of the issuance of a termination notice after a decision to terminate has been made.

(2) Stop work orders should include (i) a clear description of the work to be suspended, (ii) instructions as to the issuance of further orders by the contractor for material or services, (iii) guidance as to action to be taken on subcontracts and (iv) other suggestions to the contractor for minimizing costs. Promptly after issuance, stop work orders should be discussed with the contractor and should be modified, if necessary, in the light of such discussions.

(3) As soon as feasible after a stop work order is issued, (i) the contract will be terminated; or (ii) the stop work order will either be canceled or—if necessary and if the contractor agrees—be extended beyond the period specified in the order. In any event, this must be done before the specified stop work period expires. When an extension of the stop work order is necessary, it shall be evidenced by a supplemental agreement. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(c) *Clause.*

STOP WORK ORDER (1971 APR)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90)* days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90)* days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

(i) cancel the stop work order, or
(ii) terminate the work covered by such order as provided in the "Default" or the "Termination for Convenience" clause of this contract.

(b) If a stop work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(i) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and
(ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; *provided* that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

(d) If a stop work order is not canceled and the work covered by such order is terminated for default, the reasonable costs resulting from the stop work order shall be allowed by equitable adjustment or otherwise.

(End of clause)

*The clause may provide for less than ninety (90) days.

7–105.4 *Report of Shipment (REPSHIP).* In accordance with 19–407, insert the following clause.

REPORT OF SHIPMENT (REPSHIP) (1968 JUN)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight which occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic (*i.e.*, within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within Alaska or Hawaii, respectively) destination (other than a port for export). The notice will be transmitted by rapid means (electrical if necessary) to be received by the consignee transportation officer at least 24 hours prior to the arrival of the shipment. When the length of time in transit will permit other than electrical means of transmission to provide the information 24 hours prior to arrival of shipment, the Government bill of lading, commercial bill of lading, letter, or other document which contains all of the following should be addressed and sent promptly to the receiving transportation officer via United States mail. Such document will be prominently identified by the Contractor as being a "Report of Shipment" or "REPSHIP FOR T.O.".

Message Example:

REPSHIP FOR T.O. 68 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1968 JUN 1 540 CTNS MENS
COTTON TROUSERS, 30,240 LB, 1782 CUBE,
VIA PRR-L&N*
IN CAR NO. PRR 123456** - GBL*** - C9800031****
CONTRACT DSA ....ETA***** - JUNE 5 JONES & CO., JERSEY
CITY, N.J.

(End of clause)

*	Name of rail carrier, trucker, or other carrier.
**	Vehicle identification.
***	Government Bill of Lading.
****	If not shipped by GBL, identify lading document and state whether paid by contractor.
*****	Estimated Time of Arrival.

7-105.5 *Liquidated Damages.* In accordance with 1-310, where a liquidated damages provision is to be used, the following provision shall be inserted as paragraph (f) of the Default clause (7-103.11) and the present paragraphs (f) and (g) of that clause shall be redesignated "g" and "h":

(f) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension thereof, the actual damage to the Government for the delay will be difficult or impossible to determine. Therefore in lieu of actual damages the Contractor shall pay to the Government as fixed, agreed, and liquidated damages for each calendar day of delay, the amount set forth elsewhere in this contract. Alternatively, the Government may terminate this contract in whole or in part as provided in paragraph (a) of this clause, and in that event the Contractor shall be liable, in addition to the excess costs provided in paragraph (b) above, for such liquidated damages accruing until such time as the Government may reasonably obtain delivery or performance of similar supplies or services. The Contractor shall not be charged with liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the Contractor, as defined in paragraph (c) above, and in such event, subject to the "Disputes" clause, the Contracting Officer shall ascertain the facts and extent of the delay and shall extend the time for performance of the contract when in his judgment the findings of fact justify an extension.

7-105.6 *Bill of Materials.* A bill of materials consists of a report by a supplier which specifies the quantities of various materials required to produce a designated quantity of supplies of a particular kind. A bill of materials with respect to all or part of the supplies to be furnished pursuant to a contract, shall be required only if the contracting officer shall determine that such bill is necessary to develop materials or components requirements for production and maintenance programs, for industrial mobilization purposes, or for other specified purposes. In such event, the contract shall specify, with respect to such bill, the following:

(i) the supplies or parts thereof to be covered by the bill of materials;

(ii) the type of bill or bills (detailed, modified, expanded summary, or abbreviated summary) to be furnished, with applicable instructions;

(iii) the compensation to be paid the contractor for furnishing such bill and any revisions thereto, or a statement that the price of the item to which the bill relates includes compensation for the furnishing of such bill;

(iv) the number and kind of copies of such bill to be furnished; and
(v) delivery dates.

In such event, the contract shall also include the following clause:

BILL OF MATERIALS (1955 APR)

(a) With respect to the supplies to be delivered pursuant to the contract, for which a Bill of Materials is required, the Contractor shall furnish a Bill of Materials in the required number of copies on Department of Defense Forms 346, and 347 if applicable, or authorized reproductions thereof, in accordance with the instructions specified in the Schedule.

(b) The Contractor shall furnish to the Government, at such intervals as designated in the Schedule, revised pages of the Bill of Materials incorporating the effect of any changes, pursuant to the clause hereof entitled "Changes," in the quantity of any material or part, or any other information contained in the Bill of Materials, or a statement that no revision is necessary. A final revision, or statement that no revision is necessary, shall be furnished upon completion of performance of the contract.

(c) The Bill of Materials and all revisions or statements subsequent thereto shall be subject to inspection and acceptance by the Government.

(End of clause)

When a bill of materials is procured by contract separate from the supplies to which such bill of materials relates, such contract shall include such of the terms mentioned above as may be appropriate and shall specify that the bill of materials shall be furnished on DD Forms 346, and 347 if applicable, or authorized reproductions thereof. The contractor shall not be required to obtain data for the bill of materials in greater detail from a subcontractor than he is to furnish under the terms of the above clause.

7-105.7 *Warranty Clauses.*

(a) The following clause is an example for use in accordance with 1-324. Additional guidance is in paragraph (d) below.

WARRANTY OF SUPPLIES

(a) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract or any provision of this contract concerning the conclusiveness thereof, the contractor warrants that at the time of delivery:* (*See footnotes at end of clause*)

(i) all supplies furnished under this contract will be free from defects in material or workmanship and will conform with the specifications and all other requirements of this contract; and

(ii) the preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of this contract.

(b) The Contracting Officer shall give written notice to the Contractor of any breach of the warranties in paragraph (a) of this clause within one year after delivery of the nonconforming supplies.**

(c) Within a reasonable time after such notice, the Contracting Officer may either:

(i) by written notice require the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of this contract within the meaning of paragraph (a) of this clause; or

(ii) retain such supplies, whereupon the contract price thereof shall be reduced by an amount equitable under the circumstances.

(d) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components thereof subject to warranty action shall be determined in accordance with the applicable sampling procedures contained in the contract. For sampling purposes, the Contracting Officer may group any supplies delivered under this contract. The size of the sample shall be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed. Warranty sampling results may be projected over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection, *provided*, the supplies remaining are reasonably representative of the quantity on which warranty action is proposed. The original inspection lots need not be reconstituted, nor shall the Contracting Officer be required to use the same lot size as on original inspection. Within a reasonable time after notice of any breach of warranties in paragraph (a) of this clause as determined herein, the Contracting Officer may exercise one or more of the following options:

(i) require an equitable adjustment in the contract price for any group of supplies;

(ii) screen the supplies grouped under this clause at Contractor's expense and return all nonconforming supplies to the Contractor for correction or replacement;

(iii) require the Contractor to screen the supplies at depots designated by the Government within the continental United States and to correct or replace all nonconforming supplies; and/or

(iv) return the supplies grouped under this clause to the Contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(e) When return, correction, or replacement is required, transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in this contract and the Contractor's plant, and return.

(f) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies with similar supplies and charge to the Contractor the cost occasioned to the Government thereby if the Contractor (i) fails to make redelivery of the corrected or replaced supplies within the time established for their return, or (ii) fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure. In lieu of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner. The Government is entitled to reimbursement from the Contractor or from the proceeds of such disposal for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(g) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered. The warranty with respect to such supplies or parts thereof shall be equal in duration to that set forth in (a) above and shall run from the date of delivery of such corrected or replaced supplies.

(h) The word "*supplies*" as used herein means the end item furnished by the Contractor and related services required under the contract. The word does not include technical data.

(i) All implied warranties of merchantability and "fitness for a particular purpose" are hereby excluded from any obligation contained in this contract.

(j) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(End of clause)

Footnotes for above clause:

* Or state the specific warranty period, *e.g.*, for (insert period of time) after delivery or the specified event whose occurrence will terminate the warranty period,*e.g.*, the number of miles or hours of use, or combinations of any applicable events or periods of time (see 1-324.4(c)).

** Or insert another specific period of time in which notice shall be given to the contractor, *e.g.*, "within (insert period of time) of the last delivery under this contract," or "within (insert period of time) after discovery of the defect" when a specific warranty period is expressed in paragraph (a) of the clause (see 1-324.4(d))

(b) The following clause is an example for use in accordance with 1-324 in contracts for deliverable complex items. Additional guidance is in paragraph (d) below.

WARRANTY OF SUPPLIES

(a) *Definitions.*

(1) *Acceptance:* The word "*acceptance*" as used herein means the execution of the Acceptance Block and signing of a Form DD 250 by the authorized Government representative.

(2) *Supplies:* The word "*supplies*" as used herein means the end item furnished by the Contractor and any related services required under this contract. The word does not include technical data.

(b) *Warranty.* The Contractor warrants that * .... (*See footnotes at end of clause*) all supplies furnished under this contract will be free from defects in material and workmanship and will conform with the specifications and all other requirements of this contract; *provided*, however, that with respect to Government-furnished property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on such property, in which case the Contractor's warranty shall extend to such modification or other work.

(c) *Remedies.*

(1) *Right to Corrective or Replacement Action.* In the event of a breach of the Contractor's warranty in paragraph (b) above, the Government may, at no increase in contract price, (A) require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies, or (B) require the Contractor to furnish at the Contractor's plant such materials or parts and installation instructions as may be required to successfully accomplish the required correction. The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required under this clause (including revision and updating of all affected data called for under this contract) at no increase in the contract price. When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.

(2) *Right to Equitable Adjustment.* If the Government does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace by reason of paragraph (f) below, the Government shall be entitled to an equitable reduction in the price of such supplies.

(d) *Notification.* Except as the notification period may be extended by paragraph (e), the Contractor shall be notified in writing of any breach of the warranty in paragraph (b) above within ** .... Within *** .... thereafter, the Contractor shall submit to the Contracting Officer a written recommendation as to the corrective action required to remedy the breach. After the notice of breach, but not later than **** .... after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may in writing direct correction or replacement as set forth in paragraph (c) above, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty comply with such direction. In the event it is later determined that the Contractor did not breach the warranty in paragraph (b) above, the contract price will be equitably adjusted.

(e) *Corrected or Replaced Supplies.*

(1) Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered. The warranty with respect to such supplies or parts thereof shall be equal in duration to that set forth in (b) above and shall run from the date of delivery of such corrected or replaced supplies.

(2) With respect to such supplies, the period for notification of a breach of the Contractor's warranty in paragraph (d) shall be ***** .... from the furnishing or return by the Contractor to the Government of the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for ***** .... thereafter.

(f) *Inability to Correct.* The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish such correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer in writing of such nonavailability.

(g) All implied warranties of merchantability and "fitness for a particular purpose" are hereby excluded from any obligation contained in this contract.

(h) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(End of clause)

Footnotes for above clause:

* State the specific warranty period, *e.g.*, "at the time of delivery," "for .... (insert period of time) after delivery" or the specified event whose occurrence will terminate the warranty period, *e.g.*, the number of miles or hours of use, or combination of any applicable events or periods of time (see 1-324.4(c)).

** Insert the specific period of time in which notice shall be given to the Contractor, *e.g.*, "..........(insert period of time) after delivery of the nonconforming supplies," "..........(insert period of time) of the last delivery under this contract," or "..........(insert period of time) after discovery of the defect" when a specific warranty period is expressed in paragraph (b) of the clause (see 1-324.4(d)).

*** Insert period within which the Contractor must respond to a notice of breach of warranty.

**** Insert period within which warranty remedies should be exercised.

***** Insert period within which Contractor must be notified of a breach of warranty as to corrected or replaced supplies.

(c) The following clause is an example for use in accordance with 1-324 in contracts for systems and equipment when performance specifications or design are of major importance. Additional guidance is in paragraph (d) below.

CORRECTION OF DEFICIENCIES

(a) *Definitions.* As used in this clause:

- (i) "*deficiency*" means any condition or characteristic in any supplies or services furnished hereunder, which is not in compliance with the requirements of this contract;
- (ii) "*correction*" means any and all actions necessary to eliminate any and all deficiencies; and
- (iii) the word "*supplies*" as used herein means the end item furnished by the Contractor and related services required under the contract. Except when the contract includes the clause entitled Warranty of Technical Data, the word also includes technical data.

(b) *General.*

(1) The rights and remedies of the Government provided in this clause:

- (i) shall not be affected in any way by any other provisions under this contract concerning the conclusiveness of inspection and acceptance; and
- (ii) are in addition to and do not limit any rights afforded to the Government by any other clause of this contract.

(2) This clause shall apply only to those deficiencies discovered by either the Government or the Contractor *................. (*See footnotes at end of clause.*)

(3) The Contractor shall not be responsible under this clause for the correction of deficiencies in Government-furnished property, except for deficiencies in installation unless the Contractor performs or is obligated to perform any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of deficiencies to the extent of such modifications or other work.

(c) *Deficiencies in Accepted Supplies or Services.*

(1) *Notice to Contractor; His Recommendation for Correction.* If the Contracting Officer determines that a deficiency exists in any of the supplies or services accepted by the Government under this contract, he shall promptly notify the Contractor of the deficiency, in writing, within **................ Upon timely notification of the existence of such a deficiency, or if the Contractor independently discovers a deficiency in accepted supplies or services, the Contractor shall submit to the Contracting Officer within ***....... his recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(2) *Direction to Contractor Concerning Correction of Deficiencies.* Within ****............... after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, at his sole discretion, shall give the Contractor written notice not to correct any deficiency, or to correct or partially correct any deficiency within a reasonable time and at *****................

(3) *Correction of Deficiencies by Contractor.* The Contractor shall promptly comply with any timely written direction by the Contracting Officer to correct or partially correct a deficiency, at no increase in the contract price. The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(4) *Modification of Contract With Respect to Uncorrected Deficiencies.* In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within ******............... to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement and an equitable reduction in contract price shall promptly be negotiated by the parties and reflected in a supplemental agreement to this contract.

(d) *Deficiencies in Supplies or Services Not Yet Accepted.* If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a deficiency exists in any supplies or services, he shall promptly correct the deficiency or, if he elects to invoke the procedures in (c) above, he shall promptly notify the Contracting Officer in writing of the deficiency, together with his detailed recommendation for corrective action.

(e) *No Extension in Time for Performance; No Increase in Contract Price.*

(1) In no event shall the Government be responsible for extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct deficiencies, nor shall there be any adjustment of the delivery schedule or period of performance as a result of such correction of deficiencies unless provided by supplemental agreement with adequate consideration.

(2) It is hereby specifically recognized and agreed by the parties hereto that this clause shall not be construed as obligating the Government to increase the contract price of this contract.

(f) *Transportation Charges.*

(1) When the Government returns supplies to the Contractor for correction or replacement pursuant to this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant in addition to any charges provided for by (2) below. The Contractor shall also bear the responsibility for the supplies while in transit.

(2) When compliance with the terms of this clause by the Contractor involves shipment of corrected or replacement supplies from the Contractor to the Government, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the Contractor's plant to the place of delivery specified in this contract, (irrespective of the f.o.b. point or the point of acceptance) in addition to any charges provided for by (1) above. The Contractor shall also bear the responsibility for the supplies while in transit.

(g) *Failure to Correct*. If the Contractor fails or refuses to:

(i) present a detailed recommendation for corrective action in accordance with (c) above,

(ii) correct deficiencies in accordance with (c)(3) above, or

(iii) prepare and furnish data and reports in accordance with (c)(3) above,

the Contracting Officer shall give the Contractor written notice specifying the failure or refusal and setting a period after receipt of the notice within which it must be cured. If the failure or refusal is not cured within the specified period, the Contracting Officer may, by contract or otherwise, as required:

(A) obtain detailed recommendations for corrective action;

(B) (I) correct the supplies or services, or

(II) replace the supplies or services — and if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred; and

(C) obtain applicable data and reports;

and charge to the Contractor the cost occasioned to the Government pursuant to (i), (ii), and (iii) above.

(h) *Correction of Deficient Replacements and Re-performances*. Any supplies or parts thereof corrected or furnished in replacement and any services re-performed pursuant to this clause shall also be subject to all the provisions of the clause to the same extent as supplies or services initially accepted. The warranty with respect to such supplies, parts, or services shall be equal in duration to that set forth in (b)(2) above, and shall run from the date of delivery of such corrected or replaced supplies.

(i) All implied warranties of merchantability and "fitness for a particular purpose" are hereby excluded from any obligation under this contract.

(End of clause)

Footnotes for above clause.

* State the specific warranty period, *e.g.*, "at the time of delivery," "within ....(insert period of time) after delivery" or the specified event whose occurrence will terminate the warranty period, *e.g.*, the number of miles or hours of use, or combination of any applicable events or periods of time (see 1-324.4(c)).

** Insert the specific period of time in which notice shall be given to the Contractor, *e.g.*, "within ....(insert period of time) after delivery of the nonconforming supplies," "within ....(insert period of time) of the last delivery under this contract," or "within ....(insert period of time) after discovery of the deficiency" when a specific warranty period is expressed in paragraph (b) of the clause (see 1-324.4(d)).

*** Insert period of time within which the Contractor must respond to a notice of deficiency.

**** Insert a specific time period.

***** Insert the locations where correction may be directed.

****** Insert period of time within which Contractor must submit a proposal.

(d) (1) When a contractor's rather than the Government's design is to be used, insert the word "design" before "material" in paragraph (a)(i) of the clause in (a) above or in paragraph (b) of the clause in (b) above.

(2) When purchasing commercial items using the clause in (a) above, the following paragraph shall normally be substituted for paragraph (a) of that clause; also, paragraph (i) of that clause shall be deleted and paragraph (j) re-lettered as

(i). When using the clause in (b) above, the following paragraph shall be substituted for paragraph (b) of that clause; also, paragraph (g) of that clause shall be deleted and paragraph (h) re-lettered as (g).

> ( ) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any provision of this contract concerning the conclusiveness thereof the Contractor warrants at the time of delivery* that all supplies:
> (i) are of a quality to pass without objection in the trade under the contract description;
> (ii) are fit for the ordinary purposes for which such supplies are used;
> (iii) run, within the variations permitted by the contract, if any, of even kind, quality, and quantity within each unit and among all units;
> (iv) are adequately contained, packaged, and marked as the contract may require; and
> (v) conform to the promises or affirmations of fact made on the container.
>
> **(End of clause paragraph)**

(3) The following paragraph (e) may be substituted for paragraph (e) of the clause in (a) above when it is desirable to provide that necessary transportation incident to correction or replacement will be at the Government's expense. This may be appropriate, for instance, when the cost of a warranty would otherwise be prohibitive. The same substitution may be made for the last sentence in paragraph (c)(i) of the clause in (b) above, or for paragraph (f) of the clause in (c) above.

> (e) When correction or replacement is required, and transportation of supplies in connection with such correction or replacement is necessary, transportation charges and responsibility for such supplies while in transit shall be borne by the Government.
>
> **(End of clause paragraph)**

(4) The following paragraph may be substituted for paragraph (f) of the clause in (a) above when the supplies cannot be obtained from another source.

> (f) If the Contractor does not agree as to his responsibility to correct or replace the supplies delivered, he shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c) to correct or replace the defective or nonconforming supplies. In the event it is later determined that such supplies were not defective or nonconforming within the provisions of this clause, the contract price will be equitably adjusted.
>
> **(End of clause paragraph)**

(5) The following paragraph should be added when one of the clauses in (a), (b), or (c) above is included in a fixed-price incentive contract.

> All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made pursuant to paragraph (c) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.
>
> **(End of clause paragraph)**

(6) The following paragraph should be added to the clauses in (a), (b), or (c) above when the recovery of the warranted item involves considerable Government expense for disassembly/reassembly of larger items.

The Contractor shall be liable for reasonable costs of disassembly/reassembly of larger items necessary to remove the supplies to be inspected and/or returned for correction or replacement.

(End of clause paragraph)

7-106 Economic Price Adjustment Clauses (Established Prices).

7-106.1 *Price Adjustment Clause for Basic Steel, Aluminum, Brass, Bronze or Copper Mill Products.* In accordance with 3-404.3(c)(1)*a*, insert the following clause.

ECONOMIC PRICE ADJUSTMENT — BASIC STEEL, ALUMINUM, BRASS, BRONZE OR COPPER MILL PRODUCTS (1978 AUG)

(a) The Contractor warrants that the unit price stated herein for .... is not in excess of the Contractor's applicable established price in effect on the date set for opening of bids (or the contract date if this is not a contract entered into by means of formal advertising) for like quantities of the same item. The term "unit price" excludes any part of the price which reflects requirements for preservation, packaging and packing beyond standard commercial practice. The term "established price" means one which (i) is an established catalog or market price for a commercial item sold in substantial quantities to the general public and (ii) meets the criteria of paragraph 3-807.7(b) of the Armed Services Procurement Regulation. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the date set for opening of bids (or the contract date, if this is not a contract entered into by means of formal advertising), the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly, *provided* that:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed ten percent (10%) of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days thereafter, but if not, the effective date of increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault of negligence of the Contractor, within the meaning of the "Default" clause of this contract.

(4) No modification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within 30 days after receipt of the Contractor's written request the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation, except that the Contractor may thereafter deliver any items which the Contractor certifies, by notice received by the Contracting Officer within 10 days after the Contractor receives the cancellation notice, were completed or in the process of manufacture at the time of receipt of such cancellation notice, and the Government shall pay for such items so delivered at the contract unit price increased to the extent provided by (c) above. Any standard steel supply shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(e) Pending any cancellation of this contract as provided in (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provided by (c) above.

(End of clause)

7-106.2 *Price Adjustment Clause for Nonstandard Steel Items.* In accordance with 3-404.3(c)(1)*b*, *insert the following clause.*

ECONOMIC PRICE ADJUSTMENT — NONSTANDARD STEEL ITEMS (1978 AUG)

(a) The term "established price" as used in this clause is one which (i) is an established catalog or market price of a commercial item sold in substantial quantities to the general public and (ii) meets the criteria of Armed Services Procurement Regulation 3-807.7(b). Such a price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or scheduled price. (But see Note (8)).

(b) Each contract unit price shall be subject to revision, pursuant to the provisions of this clause, to reflect changes in the cost of labor and steel. For the purpose of any such price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified in paragraph (d) below shall be .... percent, and the proportion of the contract unit price attributable to the cost of steel shall be .... percent. [*See Note(1).*]

(c) For the purposes of this paragraph, the term "labor index" shall mean the average straight time hourly earnings of the Contractor's employees in the .... shop of the Contractor's .... plant [*see Note* (*2*)] for any particular month. The word "month" as used herein means "calendar month"; *provided*, however, that if the Contractor's accounting period does not coincide with the calendar month, then such accounting period shall be used throughout the clause in lieu of "month". Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the particular shop identified above for any given month by the total number of straight time hours worked by such employees in that month. Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the "base labor index," which shall be the average of the labor indices for the three months consisting of the month of ...., 19—, [*see Note* (*3*)] the month immediately preceding and the month immediately following, and to the "current labor index," which shall be the average of the labor indices for the month in which delivery of supplies is required to be made in accordance with the terms of this contract and the month preceding.

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the "base steel index," which shall be the Contractor's established price [*see Note* (*8*)] including all applicable extras of $.................. per .... [*see Note* (*4*)] *for* .... [*see Note* (*5*)] on ...., 19—, [*see Note* (*6*)] and the "current steel index," which shall be the Contractor's established price [*see Note* (*8*)] of said item including all applicable extras in effect .... days [*see Note* (*7*)] prior to the first day of the month in which delivery of supplies is required to be made in accordance with the terms of the contract.

(e) Each contract unit price shall be revised for each month in which, by the terms of this contract, delivery of supplies is required to be made, and such revised contract unit price shall apply to the deliveries of those quantities of supplies required to be made in that month regardless of when actual delivery be made of said quantities of supplies. Each revised contract unit price for any month shall be computed by adding together the following three amounts: (i) the amount representing the adjusted cost of labor) obtained by multiplying .... percent of the contract unit price by a fraction, the numerator of which shall be the current labor index and the denominator of which shall be the base labor index; (ii) the amount (representing the adjusted cost of steel) obtained by multiplying .... percent of the contract unit price by a fraction, the numerator of which shall be the current steel index and the denominator of which shall be the base steel index; and (iii) the amount equal to .... percent of the original contract unit price (representing that portion of such unit price which relates neither to the cost of labor nor to the cost of steel and which is therefore not subject to revision [*see Note (1)*]; *provided*, however, that any revised contract unit price made pursuant to the provisions of this clause shall in no event exceed one hundred and ten percent (110%) of the original contract unit price. All computations shall be made to the nearest one-hundredth of one cent.

(f) Pending revisions of the contract unit prices, if any, to be made pursuant to this clause, the Contractor shall be paid the contract unit prices for deliveries made. Within thirty days after the final delivery of supplies, or within such further period of time as may be authorized by the Contracting Officer, the Contractor shall furnish a statement setting forth and certifying the correctness of (i) the average straight time hourly earnings of the Contractor's employees in the shop of the Contractor identified in paragraph (c) above which earnings are relevant to the computations of the "base labor index" and the "current labor index" and (ii) the Contractor's established prices [*see Note (8)*] including all applicable extras for like quantities of the item identified in paragraph (d) above, which prices are relevant to the computation of the "base steel index" and the "current steel index." Upon request of the Contracting Officer, the Contractor shall make available his records used in the computation of the labor indices. After the receipt of such certificate by the Contracting Officer, the revised contract unit prices shall be computed in accordance with the provisions of this clause, and this contract shall be modified accordingly. However, no modification to this contract shall be made pursuant to this clause until the revised established price [*see Note (8)*] has been verified by the Contracting Officer.

(g) In the event of any total or partial termination of any item of this contract for the convenience of the Government, the month in which notice of such termination is received by the Contractor, if prior to the month in which the delivery is required by this contract, shall be considered the month in which delivery of such terminated or partially terminated item is required for the purpose of determining the current labor and steel indices under paragraphs (c) and (d) hereof; *provided*, however, that as to the quantity of such item which is not terminated for convenience, the month in which delivery is required by this contract shall continue to apply for determining said indices. In the case of termination of any steel item for default of the Contractor, any price revision shall be limited to the quantity of such item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of notice of termination for default.

(h) As used in this clause the phrase "the month in which delivery of supplies is required to be made in accordance with the terms of this contract" shall mean any month in which under the terms of this contract a specific quantity of units of the supplies called for by this contract is required to be delivered; *provided*, however, that in the case of the failure of the Contractor to make delivery of such quantity shall have arisen out of causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the clause of this contract entitled "Default," the quantity not delivered shall be required to be delivered as promptly as possible after the cessation of the cause of such failure, and the delivery schedule set forth in this contract shall be amended accordingly.

NOTES:

(1) Bidder insert the same percentage figures for the corresponding blanks in paragraphs (b) and in (e)(i) and (ii). In paragraph (e)(iii), bidder insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.

(2) Bidder identify the shop and plant in which the standard steel mill item identified in paragraph (d) will be finally fabricated or processed into the contract item.

(3) Bidder insert the month of bid opening, or the month in which the Contractor submitted his proposal if this is a negotiated contract.

(4) Bidder insert the unit price and unit measure of the standard steel mill item used by the Contractor in the manufacture of the contract item.

(5) Bidder identify the standard steel mill item used by the Contractor in the manufacture of the contract item.

(6) Bidder insert the date set for bid opening, or the date of the Contractor's quotation if this is a negotiated contract.

(7) Bidder insert the number of days which represents the Contractor's best estimate of the period of time required for processing the standard steel mill item in the shop identified in paragraph (c).

(8) In negotiated procurements of nonstandard steel items, when there is no "established price" or when it is not desirable to use such price, this paragraph may refer to another appropriate price basis, such as an established interplant price.

(End of clause)

7-106.3 *Price Adjustment Clause for Standard Supplies.* In accordance with 3-404.3(c)(1)*c*, insert the following clause.

ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES (1978 AUG)

(a) The Contractor warrants that the unit price stated herein for .... is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price which reflects requirements for preservation, packaging and packing beyond standard commercial practice. The term "established price" means one which (i) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (ii) meets the criteria of paragraph 3-807.7(b) of the Armed Services Procurement Regulation. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list, or schedule price.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases required by this clause, or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly, *provided* that:

(1) The aggregate of the increases in any contract unit price made under this clause shall not exceed ten percent (10%) of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days thereafter, but if not, the effective date of the increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the "Default" clause of this contract;

(4) No modification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within 30 days after receipt of a Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation.

(e) Pending any cancellation as provided in (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provided by (c) above.

(End of clause)

7-106.4 *Price Adjustment Clause for Semistandard Supplies.* In accordance with 3-404.3(c)(1)*d*, insert the following clause.

ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD SUPPLIES (1978 AUG)

(a) The Contractor warrants that the supplies identified as line items ...., ..., and .... on the schedule of this contract are supplies for which, except for modifications required by the specifications of this contract, the Contractor has an established price. The term "established price" means one which (i) is an established catalog or market price of a commercial item sold in substantial quantities to the general public, and (ii) meets the criteria of paragraph 3-807.7(b) of the Armed Services Procurement Regulation. Such price is the net price after applying any applicable standard trade discounts offered by the Contractor from his catalog, list or schedule price. The Contractor further warrants that as of the current date any differences between the unit prices of the line items identified above, as stated in the schedule, and the Contractor's established prices for like quantities of the nearest commercial equivalents of such contract items are due to compliance with contract specifications, and to compliance with any requirements which this contract may contain for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer as to the amount and effective date of each decrease in any applicable established price, and each corresponding contract unit price, exclusive of any part of such unit price which reflects modifications resulting from compliance with specifications or requirements for preservation, packaging, and packing beyond standard commercial practice, shall be decreased by the same percentage that the said established price is decreased. Such decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify on each invoice that each unit price stated therein reflects all decreases, required by this clause or shall certify on the final invoice that all price decreases required by this clause have been applied in the manner herein required.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of such unit price resulting from compliance with specification or requirements for preservation, packaging, and packing, beyond standard commercial practice) shall be increased, upon the Contractor's request in writing to the Contracting Officer, by the same percentage that the established price is increased and the contract shall be modified accordingly, provided that:

(1) The aggregate of the increases in any contract unit price made under this clause shall not exceed ten percent (10%) of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within 10 days thereafter, but if not, the effective date of the increased unit price shall be the date of receipt by the Contracting Officer of such request;

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price unless the Contractor's failure to deliver before such date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the "Default" clause of this contract;

(4) No modification incorporating an increase in a contract unit price shall be executed pursuant to this clause until the increase in the applicable established price has been verified by the Contracting Officer.

(d) Within 30 days after receipt of a Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and undelivered at the time of such cancellation.

(e) Pending any cancellation as provided in (d) above and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract and shall be paid for such deliveries at the contract unit price increased to the extent provided by (c) above.

(End of clause)

7-107 Economic Price Adjustment Clause (Labor and Material). In accordance with 3-404.3(c)(2), insert the following clause.

ECONOMIC PRICE ADJUSTMENT - LABOR AND MATERIAL (1974 MAR)

(a) If at any time during the performance of this contract there is an increase or decrease in the rates of pay for labor (including fringe benefits) or unit prices for materials set forth in the Schedule, the Contractor shall notify the Contracting Officer thereof within sixty (60) days of such increase or decrease or within such further period as may be approved in writing by the Contracting Officer, but in any event not later than final payment under the contract. Such notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated in accordance with paragraph (b) below and shall be accompanied by data, in such form as the Contracting Officer may require, including (i) the causes, (ii) the effective date, and (iii) the amount, both of the increase or decrease and of the Contractor's proposal for price adjustment.

(b) Promptly upon receipt of any notice and data described in (a) above, the Contractor and the Contracting Officer shall negotiate a price adjustment, and the effective date thereof, in the contract unit prices. Such adjustments will be limited to the amount of increase or decrease in the labor rates (including fringe benefits) or unit price of materials, as identified in the Schedule; *provided*, however, that such negotiations may be postponed by the Contracting Officer until an accumulation of such increases and decreases results in an adjustment allowable under paragraph (c)(v) of this clause. The price adjustment, and the effective date thereof, shall be set forth in an amendment to this contract. Such amendment shall also revise the rates of pay for labor (including fringe benefits) or unit prices for materials set forth in the Schedule to reflect the increase or decrease therein. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(c) Notwithstanding any other provision of this clause, any price adjustments under this clause shall be subject to the following limitations:

(i) There shall be no adjustment for supplies or services whose production cost is not affected by a change in the rates of pay for labor (including fringe benefits) or unit prices for materials set forth in the Schedule.

(ii) There shall be no adjustment other than for increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices of materials set forth in the Schedule.

(iii) There shall be no adjustment for any increase or decrease in the quantities of labor or materials set forth in the Schedule for each item to be delivered hereunder.

(iv) No upward adjustment shall apply to supplies or services which are required to be delivered or performed prior to the effective date of the adjustment unless the Contractor's failure to deliver or perform in accordance with the delivery schedules results from causes beyond the control and without the fault or negligence of the Contractor within the meaning of the clause of this contract entitled "Default," in which case the contract shall be amended to make an equitable extension of the delivery or performance schedule.

(v) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for materials which would not result in a net change of at least three percent (3%) of the then current total contract price; and except that, after delivery of the last unit called for by this contract, if either party requests an adjustment pursuant to (b) above, this limitation shall not apply.

(vi) The aggregate of the increases in any contract unit price (or labor rate) made under this clause shall not exceed ten percent (10%) of the original unit price (or labor rate). There is no percentage limitation on the amount of decrease made under this clause.

(d) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor (including fringe benefits) or unit prices for materials set forth in the Schedule or that he has given notice of all such decreases in compliance with (a) above.

(e) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and materials during all reasonable times until the expiration of three (3) years from the date of final payment under this contract or for the time periods specified in Appendix M of the Armed Services Procurement Regulation, whichever expires earlier.

(End of clause)

7-108 Incentive Price Revision Clauses.

7-108.1 *Firm Targets.* When in accordance with the provisions of Section III, Part 4, the fixed-price incentive contract described in 3-404.4(a) (2) is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the target cost, target profit, target price.

INCENTIVE PRICE REVISION (FIRM TARGET) (1980 FEB)

(a) *General.* The supplies or services identified in the Schedule as items .... are subject to price revision in accordance with the provisions of this clause; *provided*, that in no event shall the total final price of such items exceed .... dollars ($..........). Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(b) *Definition of Cost.* For the purposes of this clause, "cost" or "costs" means allowable cost in accordance with Section XV of the Defense Acquisition Regulation as in effect on the date of this contract.

(c) *Submission of Data.* Within .... (..........) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, the Contractor shall submit, on DD Form 633 or other form as the Contracting Officer may require, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items, and (iii) a list of all residual inventory and an estimate of the value thereof.

(d) *Price Revision.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, together with any other pertinent information, there shall be established by negotiation the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total final price shall be established by adjusting the total final negotiated cost by an amount for profit or loss determined as follows:

WHEN THE TOTAL FINAL NEGOTIATED COST IS:	THE ADJUSTMENT FOR PROFIT OR LOSS IS:
Equal to the total target cost ------	Total target profit.
Greater than the total target cost ---	Total target profit less ___ percent (___%) of the amount by which the total final negotiated cost exceeds the total target cost.
Less than the total target cost -----	Total target profit plus ___ percent (___%) of the amount by which the total final negotiated cost is less than the total target cost.

(3) The total final price of the items referred to in paragraph (a) above shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such price shall not be subject to revision notwithstanding any changes in the cost of performing the contract, with the following exceptions:

(i) insofar as the parties may agree in writing, prior to the determination of the total final price, (A) to exclude any specific elements of cost from the total final price and (B) to a procedure to provide subsequent disposition of such elements; and

(ii) to the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

(4) When the Contractor fails to submit the data required by paragraph (c) above within the time required therein and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment.

(e) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(f) *Adjustment of Payments.* Pending execution of the contract modification referred to in subparagraph (d)(3) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices set forth in this contract; *provided*, that if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (g)(2) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target price and the ceiling price upon submission of factual data from the Contractor showing that final costs under this contract will be substantially greater than target cost. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the determination of the total final price under paragraph (d) above. After execution of the contract modification referred to in subparagraph (d)(3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (g) shall not apply after final price revision.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contract Administration Office, with a copy to the purchasing activity and the cognizant contract auditor, a cumulative statement setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in (d)(2) above when the amount of costs stated under (ii) above differs from the aggregate target costs of such supplies or services; and

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invo-

ices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the "Progress Payments" clause of this contract, instead of direct refund thereof.

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter and it is later determined that the Government has overpaid the the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the quarterly statement was due to the date of repayment.

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (g), including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (g), including this subparagraph (5) modified as outlined in (i) above.

(h) *Disagreements*. If the Contractor and the Contracting Officer fail to agree upon the total final price within sixty (60) days after the date on which the data required by (c) above are to be submitted, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract and the Contracting Officer shall promptly issue a decision thereunder.

(i) *Termination*. If this contract is terminated prior to establishment of the total final price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. The termination shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(j) *Equitable Adjustment Under Other Clauses*. If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit or both. If such an adjustment is made after the total final price is established, adjustment shall be made only in the total final price.

(k) *Exclusion From Target Price and Total Final Price*. Whenever any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, such provision shall mean that neither any target price nor the total final price includes or will include any amount for such purpose.

(l) *Separate Reimbursement*. The cost of performance of an obligation that any clause of this contract expressly provides is at Government expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(m) *Taxes*. As used in the "Federal, State, and Local Taxes" clause of this contract or any other clause of this contract that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price, or if it has been established, the total final price. When a provision in such clause or clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, such increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so as not to affect the contractor's profit or loss on this contract.

(End of clause)

In contracts of the Department of the Navy, add the words "and the office or offices designated in this contract to make payments thereunder" after the words "cognizant contract auditor" in paragraph (g)(2) above. In the event the contract calls for parts or other supplies or services which are to be ordered under a provisioning document or Government option and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (n) shall be included in such clause:

> (n) *Parts*. Parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be target prices. Target cost and profit covering such parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree. (1970 SEP)

7–108.2 *Successive Targets*. When in accordance with the provisions of Section III, Part 4, the fixed-price incentive contract described in 3–404.4(a)(3) is to be used, the following clause shall be made a part of the contract. As to each item which is to be subject to incentive price revision, the contract schedule shall set forth the initial target cost, initial target profit, and initial target price.

INCENTIVE PRICE REVISION (SUCCESSIVE TARGETS) (1980 FEB)

(a) *General*. The supplies or services identified in the Schedule as Items — are subject to price revision in accordance with the provisions of this clause; *provided*, that in no event shall the total final price of such items exceed .... dollars ($............). The prices of these items as shown in the Schedule are the initial target prices, which include an initial target profit of .... percent (—%) of the initial target cost. Any supplies or services which are to be ordered separately under, or otherwise added to, this contract, and which are to be subject to price revision in accordance with the provisions of this clause, shall be identified as such in a modification to this contract.

(b) *Definition of Cost*. For the purposes of this clause, "cost" or "costs" means allowable costs in accordance with Section XV of the Defense Acquisition Regulation in effect on the date of this contract.

(c) *Submission of Data for Establishment of Firm Fixed-Price or Final Profit Adjustment Formula*.

(1) Within — (—) days after the end of the month in which the Contractor has completed ....*, the Contractor shall submit:

(Footnote for preceding paragraph)

* The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

- (i) a proposed firm fixed-price or total firm target price for supplies delivered and to be delivered and the services performed and to be performed;
- (ii) a detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on DD Form 633 or in such other form as the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for:
  - (A) supplies delivered and services performed, and
  - (B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) an estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on DD Form 633 or in such other form as the parties may agree, together with:

(A) sufficient data to support the accuracy and reliability of such estimate, and

(B) an explanation of the differences between such an estimate and the original estimate used in establishing the initial target prices set forth in this contract for the same supplies or services.

(2) In addition to the data submitted under subparagraph (1) above, the Contractor shall submit the following:

(i) supplemental statements of costs incurred subsequent to the end of the month specified in (1) above for:

(A) supplies delivered and services performed, and

(B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) any other relevant data which may reasonably be required by the Contracting Officer;

as and to the extent that such information becomes available prior to the conclusion of negotiations establishing the total firm target price.

(d) *Establishment of Firm Fixed-Price or Final Profit Adjustment Formula.* Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish either a firm fixed-price or a profit adjustment formula for determining final profit in accordance with the following:

(1) A total firm target cost shall be negotiated, based upon the data submitted under paragraph (c) above.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit will be decreased, or if the total firm target cost is less than the total initial target cost, the total initial target profit will be increased by .... percent (—%) of the difference between the total initial target cost and the total firm target cost** and the resulting amount shall be the total firm target profit, *provided*, that in no event will such total firm target profit be less than .... percent (—%) or more than .... percent (—%) of the total initial target cost.

(Footnote for preceding paragraph)

** The language may be changed as necessary to set forth the negotiated adjustment pattern where the percentage figure to be used for adjustment of the initial target profit is not the same for all levels of cost variation.

(3) If the total firm target cost plus the total firm target profit present a reasonable price for performance of that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed-price. In this event, the firm fixed-price shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree as to a firm fixed-price shall not constitute a dispute under the "Disputes" clause of this contract. In such event or, if establishment of a firm fixed-price is considered to be inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula for determining final profit or loss in accordance with the following:

WHEN THE TOTAL FINAL NEGOTIATED COST IS:	THE ADJUSTMENT FOR FINAL PROFIT OR LOSS IS:
Equal to the total firm target cost -	Total firm target profit.
Greater than the total firm target cost --------------------------	Total firm target profit less _____ percent (_____%) of the amount by which the total final negotiated cost exceeds the total firm target cost.

Less than the total firm target cost	**Total firm target profit plus _____ percent (_____%) of the amount by which the total final negotiated cost is less than the total firm target cost.**

The total firm target cost, total firm target profit, and profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(5) When the Contractor fails to submit the data required by paragraph (c) above within the time required therein and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment.

(e) *Submission of Data for Final Price Revision.* Unless a firm fixed-price has been agreed to pursuant to paragraph (d) above, the Contractor shall submit on DD Form 633 or in such form as the Contracting Officer may require and within .... (—) days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services called for by those items referred to in paragraph (a) above, (i) a detailed statement of all costs incurred up to the end of that month in performing all work under such items, (ii) an estimate of costs of such further performance, if any, as may be necessary to complete performance of all work with respect to such items, and (iii) a list of all residual inventory and an estimate of the value thereof.

(f) *Final Price Revision.* Unless a firm fixed-price has been agreed to pursuant to paragraph (d) above, the Contractor and the Contracting Officer shall, as soon as practicable after submission of the data required by paragraph (e) above, establish the total final price in accordance with the following:

(1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, there shall be established by negotiation the total final negotiated cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government, which are subject to price revision under this clause.

(2) The total final price shall be established by adjusting the total final negotiated cost by an allowance for final profit or loss determined in accordance with the formula agreed to pursuant to subparagraph (d)(4) above.

(3) The total final price of the items referred to in paragraph (a) above shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such price shall not be subject to revision notwithstanding any changes in the cost of performing the contract with the following exceptions:

- (i) insofar as the parties may agree in writing, prior to the determination of the total final price,
  - (A) to exclude any specific elements of cost from the total final price and
  - (B) to a procedure to provide subsequent disposition of such elements; and
- (ii) to the extent any adjustment or credit is explicitly permitted or required by this or any other clause of this contract.

(g) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(h) *Adjustment of Payments.* Pending execution of the contract modification referred to in subparagraph (f)(3) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices set forth in this contract until firm target prices are established pursuant to paragraph (d) above; thereafter, the firm target prices shall be used for billing; *provided*, that if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (i)(3) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target price and the ceiling price upon submission of factual data from the Contractor showing that the final costs under this contract will be substantially greater than target cost. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the determination of any price under paragraph (d) or (f) above. After execution of the contract modification referred to in subparagraph (f)(3) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price and any additional payments, refunds, or credits resulting therefrom shall be promptly made.

(i) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (i) shall not apply after a firm fixed-price or a total final price is established pursuant to subparagraph (d)(3) or (f)(2).

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made or services are first performed and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contract Administration Office, with a copy to the purchasing activity and the cognizant contract auditor, a cumulative statement setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total firm target profit which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established, increased or decreased in accordance with the incentive profit formula set forth in subparagraph (d)(4) above when the amount of costs stated under (ii) above differs from the aggregate firm target costs of such supplies or services; and;

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount stated in (2)(iv) above exceeds the sum stated in (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the "Progress Payments" clause of this contract instead of direct refund thereof.

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter, and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment. |

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this paragraph (i), including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this paragraph (i), including this subparagraph (5) modified as outlined in (i) above.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (i) total firm target cost and a final profit adjustment formula, or (ii) a total final price, within sixty (60) days after the date for the submission of the data required by paragraphs (c) and (e) respectively, or within such further time as may be specified by the Contracting Officer, such failure to agree shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract, and the Contracting Officer shall promptly issue a decision thereunder.

(k) *Termination.* If this contract is terminated prior to establishment of the total final price, prices of supplies or services subject to price revision under this clause shall be established pursuant to this clause for (i) completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, supplies and services which are not terminated. The termination shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(l) *Equitable Adjustments Under Other Clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit or both. If such an adjustment is made after the total final price is established, adjustment shall be made only in the total final price.

(m) *Exclusion From Target Price and Total Final Price.* Whenever any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, such provision shall mean that neither any target price nor the total final price includes or will include any amount for such purpose.

(n) *Separate Reimbursement.* The cost of performance of an obligation that any clause of this contract expressly provides is at Government expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(o) *Taxes.* As used in the clause of this contract entitled "Federal, State, and Local Taxes" or any other clause of this contract that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or if it has been established, the total final price. When a provision in such clause or clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, such increase or decrease shall be made in the total target price or, if it has been established in the total final price, so as not to affect the Contractor's profit or loss on this contract.

(End of clause)

In contracts of the Department of the Navy, add the words "and the office or offices designated in the contract to make payments thereunder" after the words "cognizant contract auditor" in paragraph (i)(2). In the event the contract calls for parts or other supplies or services which are to be ordered under a provisioning document or Government option and the prices of such supplies or services are to be made subject to incentive price revision in accordance with the above clause, the following provision (p) shall be included in such clause:

(p) *Parts.* Parts, other supplies, or services, which are to be furnished under this contract pursuant to a provisioning document or Government option, shall be subject to price revision in accordance with the provisions of this clause, and any prices established for such parts, other supplies, or services, pursuant to such provisioning document or Government option, shall be deemed to be initial target prices or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering such parts, other supplies, or services may be established either separately, in the aggregate, or in any combination thereof, as the parties may agree.

7-108.3 *Special Termination Costs.* In accordance with 8-712, insert the following clause.

SPECIAL TERMINATION COSTS (1975 FEB)

(a) Notwithstanding the *Limitation of Cost/Limitation of Funds*, clause of this contract, the Contractor shall not include in his estimate of costs incurred or to be incurred, any amount for special termination costs, as herein defined, to which the Contractor may be entitled in the event this contract is terminated for the convenience of the Government. The Contractor agrees to perform this contract in such a manner that its claim for such special termination costs will not exceed $.......... The Government shall have no obligation to pay the Contractor any amount for the special termination costs in excess of this amount. Special termination costs are defined as costs only in the following categories:

(i) severance pay as provided in 15-205.39(b)(ii);
(ii) reasonable costs continuing after termination as provided in 15-205.42(b);
(iii) settlement expenses as provided in 15-205.42(f);
(iv) costs of return of field service personnel from sites as provided in 15-205.25, and 15-205.46(d); and
(v) costs in categories (i), (ii), (iii), and (iv) above to which subcontractors may be entitled in the event of termination.

(b) In the event of termination for the convenience of the Government, this clause shall not be construed as affecting the allowability of special termination costs in any manner other than limiting the maximum amount payable therefor by the Government.

(c) This clause shall remain in full force and effect until this contract is fully funded.

(End of clause)

7-109 Price Redetermination Clauses.

7-109.1 *General.* When it is determined, in accordance with 3-404.5 or 3-404.6, to use a fixed-price contract providing for redetermination of price, the applicable clause of those set forth below shall be used.

7-109.2 *Prospective Periodic Price Redetermination at Stated Intervals.*

(a) *Description, Applicability, and Limitations.* See 3-404.5.

(b) *Clause.*

PRICE REDETERMINATION (TYPE A) (1980 FEB)

(a) *General.* The unit prices and the total price set forth in this contract shall be periodically redetermined in accordance with the provisions of this clause.* The prices for supplies delivered and services performed prior to the first effective date of price redetermination shall remain fixed. (*See footnotes at end of clause*)

(b) *Price Redetermination Periods.* For the purpose of price redetermination the performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to ....,** and the second and each succeeding period shall extend for .... (—) months from the end of the last preceding period, except that the final period may be varied by agreement of the parties. The first day of the second and each succeeding period shall be the effective date of price redetermination for the period. (*See footnotes at end of clause*)

(c) *Price Redetermination.* Not more than ....*** (*See footnotes at end of clause*) days nor less than ....*** days before the end of each redetermination period, except the last, and as otherwise provided in (iii) below, the Contractor shall submit:

(i) proposed prices for supplies which may be delivered or services which may be performed in the next succeeding period under this contract, together with—
  (A) an estimate and breakdown of the costs of such supplies or services on DD Form 633 or in any other form on which the parties may agree;
  (B) sufficient data to support the accuracy and reliability of such estimate; and
  (C) an explanation of the differences between such estimate and the original (or last preceding) estimate for the same supplies or services;
(ii) a statement of all costs incurred in the performance of this contract through the end of the ....**** (*See Footnotes at end of clause*) month prior to the date of the submission of proposed prices, on DD Form 633 or in any other form on which the parties may agree, together with sufficient supporting data to disclose unit costs and cost trends for—
  (A) supplies delivered and services performed; and

(B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

(iii) supplemental statements of costs incurred subsequent to the date set forth in (ii) above for—

(A) supplies delivered and services performed; and

(B) inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary);

as and to the extent that such information becomes available prior to the conclusion of negotiations on redetermined prices; and

(iv) any other relevant data which may reasonably be required by the Contracting Officer.

For the purposes of the foregoing submission, "costs" means allowable costs in accordance with Section XV of the Defense Acquisition Regulation as in effect on the date of this contract. Upon receipt of the data required by this paragraph (c), the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies which may be delivered and services which may be performed in the period following the effective date of price redetermination. Where the Contractor fails to submit the data as required above within the time specified, payments under this contract may be suspended by the Contracting Officer until the data are furnished and if it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment.

(d) *Subcontracts.* No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) *Contract Modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices for supplies delivered and services performed hereunder during the applicable price redetermination period.

(f) *Adjustment or Payments.* Pending execution of the contract modification referred to in paragraph (e) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract; *provided* that, if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (g)(3) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices upon submission of factual data from the Contractor showing that the redetermined price will be substantially greater than the current billing price. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (e) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(g) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (g) shall apply only during a period for which firm prices have not been established.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contract Administration Office, with a copy to the purchasing activity and the cognizant contract auditor, ***** (*See Footnotes at end of clause*) a statement cumulative from the inception of the contract, setting forth:

(i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;

(ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;

(iii) that portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and

(iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments);

provided, that such statement need not be submitted for any quarter for which either no costs are to be reported under (ii) above or revised billing prices have been established in accordance with paragraph (g) above and do not exceed the existing contract price, the Contractor's price-redetermination offer, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2) (i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the quarterly statement was due to the date of repayment.

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (5), modified as outlined in (i) above.

(h) *Disagreements*. If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within sixty (60)****** days after the date on which the data required by (c) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of (e), (f), and (g) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification. Pending such final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as hereinbefore provided.

(i) *Termination*. If this contract is terminated, prices shall continue to be established pursuant to this clause (i) for completed supplies accepted by the Government and services performed and accepted by the Government, and (ii) in the event of a partial termination, for supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

(End of clause)

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*Where a ceiling is applicable, the following proviso shall be added: "*provided*, that in no event shall the total amount paid under this contract exceed .... dollars ($................)". Alternatively, the contract may provide ceiling amounts for each or any of the price redeterminations under the contract.

**This point may be expressed in terms of units delivered, or as a calendar date, but in either case the period shall generally end on the last day of a month.

***Insert in the blanks numbers of days so that the Contractor's submission will be late enough to reflect recent cost experience (having in mind the Contractor's accounting system), but early enough to permit review, audit if necessary, and negotiation prior to the start of the prospective period.

****Insert the word "first," except the word "second" may be inserted if necessary to achieve compatibility with the contractor's accounting system.

*****Insert, in contracts of the Department of the Navy, the words "and the office or offices designated in this contract to make payments thereunder".

******This period may be varied by the parties at the time of negotiating the contract.

7-109.3 *Retroactive Price Redetermination After Completion.*

(a) *Description, Applicability, and Limitations.* See 3-404.6.

(b) *Clause.*

PRICE REDETERMINATION (TYPE E) (1980 FEB)

(a) *General.* The unit prices and the total price set forth in this contract shall be redetermined in accordance with the provisions of this clause: *provided*, that in no event shall the total amount paid under this contract exceed .... dollars ($.........).

(b) *Price Redetermination.* Within .... (—) days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit (i) proposed prices, (ii) a statement of all costs incurred in the performance of this contract, allowable in accordance with Section XV of the Defense Acquisition Regulation as in effect on the date of this contract, on DD Form 633 or any other form on which the parties may agree, and (iii) any other relevant data which may reasonably be required by the Contracting Officer. Upon receipt of the required data, the Contractor and the Contracting Officer shall promptly negotiate to redetermine fair and reasonable contract prices for supplies delivered and services performed by the Contractor under this contract. Where the Contractor fails to submit the required data within the time specified, payment of all invoices may be suspended by the Contracting Officer until the data are furnished and if it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in DAR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment.

(c) *Subcontracts.* No subcontract under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) *Contract Modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, setting forth the redetermined prices which shall apply to supplies delivered and to services performed by the Contractor hereunder.

(e) *Adjustment of Payments.* Pending execution of the contract modification referred to in paragraph (d) above, the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the prices set forth in this contract; *provided* that, if at any time it appears that the then current billing prices will be substantially greater than the estimated final price in light of information provided by the Contractor in accordance with the provisions of subparagraph (f)(3) below, a reduction in the billing prices shall be negotiated. Similarly, the parties may negotiate an increase in billing prices upon submission of factual data from the Contractor showing that the redetermined price will be substantially greater than the current billing price. Any adjustment of billing prices shall be reflected in a modification to this contract, and shall not affect the redetermination of prices under this clause. After execution of the contract modification referred to in paragraph (d) above, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed prices, and any additional payments, refunds, or credits, resulting therefrom shall be promptly made.

(f) *Quarterly Limitation on Payments Statement.*

(1) This paragraph (f) shall apply until final price redetermination to the full extent permitted by this contract.

(2) Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and as of the end of each quarter, the Contractor shall submit to the Contract Administration Office, with a copy to the purchasing activity and the cognizant contract auditor, * (see footnotes at end of clause) a statement cumulative from the inception of the contract, setting forth:

- (i) the total contract price of all supplies delivered (or services performed) and accepted by the Government for which final prices have been established;
- (ii) the total costs (estimated to the extent necessary) reasonably incurred for and properly allocable solely to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established;
- (iii) that portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (f), Limitation on Payments), which is in direct proportion to the supplies delivered (or services performed) and accepted by the Government for which final prices have not been established; and
- (iv) the total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount of (2)(iv) above exceeds the sum of (2)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government against existing unpaid invoices or vouchers covered by such statement the amount of such excess less (i) the cumulative total of any previous refunds or credits under this clause (exclusive of any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954) and (ii) any applicable tax credits under Section 1481 of the Internal Revenue Code of 1954. If any portion of such excess has been applied to the liquidation of progress payments, such amount (less all tax credits under the Internal Revenue Code) may be added or restored to the unliquidated progress payment account, to the extent consistent with the progress payments clause of this contract, instead of direct refund thereof.

(4) When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter, and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in ASPR 7-104.39. Interest shall be computed for the period from the date the quarterly statement was due to the date of repayment.

(5) The Contractor shall (i) insert in each price redetermination or incentive price revision subcontract hereunder the substance of this "Limitation on Payments" provision, including this subparagraph (5), modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of this "Limitation on Payments" provision, including this subparagraph (5), modified as outlined in (i) above.

(g) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within sixty (60)** (*See footnotes at end of clause*) days after the date on which the data required by (b) above is to be filed, or within such further time as may be agreed upon by the parties, the failure to agree upon redetermined prices shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the Contracting Officer shall promptly issue a decision thereunder. For the purpose of paragraphs (d), (e), and (f) above, and pending final settlement of the disagreement on appeal, or by failure to appeal, or by agreement, such a decision shall be treated as an executed contract modification.

(h) *Termination.* If this contract is terminated prior to price redetermination, prices shall be established pursuant to this clause for completed supplies and services which are not terminated. All other elements of the termination shall be resolved pursuant to other applicable provisions of this contract.

(End of clause)

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*Insert, in contracts of the Department of the Navy, the words: "and the office or offices designated in the contract to make payments thereunder "

**This period may be varied by the parties at the time of negotiating the contract.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

PART 2—Cost-Reimbursement Type Supply Contracts

7-200 Scope of Part. This Part sets forth uniform contract clauses for use in cost-reimbursement type supply contracts as defined in 7-202.

7-201 Reserved.

7-202 Applicability. As used in this Part, the term "cost-reimbursement type supply contract" shall mean any contract (other than a letter contract, notice of award; or a supplemental agreement to a contract which does not effect a new procurement) entered into on a cost reimbursement basis as covered in 3-405 for supplies other than (i) the construction, alteration or repair of buildings, bridges, roads, or other kinds of real property; (ii) experimental, developmental, or research work; (iii) facilities to be provided by the Government under a "facilities contract" as defined in 7-701 and Section XIII of this Regulation or (iv) general contracts for communication services and facilities.

7-203 Required Clauses. The following clauses shall be inserted in all cost-reimbursement type supply contracts.

7-203.1 *Definitions.* Insert the clause in 7-103.1. Additional definitions may be included in such clause *provided* they are not inconsistent with the provisions of this Regulation.

7-203.2 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

- (i) drawings, designs, or specifications, where supplies to be furnished are to be specially manufactured for the Government in accordance therewith;
- (ii) method of shipment or packing; and
- (iii) place of delivery.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

- (i) in the estimated cost or delivery schedule, or both;
- (ii) in the amount of any fixed fee to be paid to the Contractor; and
- (iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-203.3 *Limitation of Cost or Funds.*

(a) The following clause shall be inserted in all fully funded cost-reimbursement type supply contracts.

LIMITATION OF COST (1966 OCT)

(a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost then set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(End of clause)

(b) The following clause shall be used in all cost-reimbursement type supply contracts which are to be incrementally funded.

LIMITATION OF FUNDS (1966 OCT)

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule, the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request, and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotment amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; *unless* the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contractual modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(End of clause)

(c) In the foregoing clauses, the period of "sixty (60) days" and the percentage of "seventy-five percent (75%)" may be varied from thirty (30) to ninety (90) days and seventy-five percent (75%) to eighty-five percent (85%). In supply contracts which provide for cost sharing, one of the clauses set forth in 7–402.2 shall be used.

(d) In accordance with 1–318(a), the appropriate clause in 7–104.91 shall be included in all cost reimbursement type supply contracts for which no funds are available at time of award.

7–203.4 *Allowable Cost, Fee, and Payment.*

(a) Except as provided in (b) below, insert the following clause in all cost-reimbursement type supply contracts. Additional instructions for use are in (c) below.

ALLOWABLE COST, FIXED FEE, AND PAYMENT (1978 SEP)

(a) For the performance of this contract, the Government shall pay to the Contractor:

- (i) the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:
  - (A) Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract; and
  - (B) the terms of this contract; and
- (ii) such fixed fee, if any, as may be provided for in the Schedule.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension, deferred profit sharing, and employee stock ownership plan contributions, the term "*costs*" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to Contractor's subcontractors under similar cost standards. In addition, when the aforementioned contributions are paid by the Contractor to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes *provided* that they are paid to the fund within thirty (30) days after the close of the period covered. If payments are not made to the fund within such thirty-day period, these contributions shall be excluded from indirect cost for payment purposes until payment has been made. (*See 15-205.6(f)*). The restriction on payment more frequently than bi-weekly and the requirement of prior payment for items or services purchased directly for the contract shall not apply where the Contractor is a small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (j) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule; *provided*, however, that after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less.

(d) Notwithstanding the provisions of paragraph (j) below, allowable indirect costs under this contract shall be obtained by applying overhead rate(s) established in accordance with paragraphs (e) and (f) below.

(e) Final annual overhead rates and the appropriate bases shall be established by procurement or audit determination in accordance with the procedures of Section III, Part 7, of ASPR in effect for the period covered by the proposal.

(f) The Contractor shall, within ninety (90) days after the expiration of each of its fiscal years for estimating, accumulating, and reporting contract costs, or some later date if approved by the Contracting Officer, submit to the Contracting Officer and to the cognizant audit activity a proposed final overhead rate(s) for that period based on the Contractor's actual cost experience during that period, together with supporting cost data specifying the contract(s) and/or subcontract(s) to which such rate(s) apply. Establishment of final annual overhead rate(s) shall be undertaken as promptly as practicable after receipt of the Contractor's proposal. The Contractor shall submit an executed *Certificate of Current Cost or Pricing Data* applicable to data furnished in connection with establishment of any final annual overhead rate(s).

(g) Final annual overhead rate(s) shall be set forth in a written overhead rate understanding executed by the Contractor and the appropriate Government representative. Such understanding is automatically incorporated in this contract upon execution and shall specify (i) the agreed upon final annual overhead rate(s), (ii) the base(s) to which the rate(s) apply, (iii) the periods for which the rate(s) apply, (iv) any specific overhead items treated as direct costs in the settlement, and (v) the affected contract(s) and/or subcontract(s), identifying any with advance agreements or special provisions and the rate(s) applicable thereto. The overhead rate understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(h) Pending establishment of final annual overhead rate(s) for any period, the Contractor shall be reimbursed at billing rate(s) established by the Contracting Officer or the auditor, subject to appropriate adjustment when final rate(s) for that period are established. Anticipated final annual rates will be used for billing rates. However, to prevent substantial over or under payment, billing rate(s) may at the request of either party be revised by mutual agreement, either retroactively or prospectively.

(i) Notwithstanding any other provisions of this clause, the quick closeout procedures set forth in Section III, Part 7, of ASPR in effect on the date of this contract, may be used when mutually agreeable to the Contractor and the Contracting Officer

(j) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(k) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (L) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(L) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided*, that such claims are not known to the Contractor on the date of the execution of the release; and *provided further* that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(m) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(n) Any failure by the parties to agree on a final overhead rate under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "*Disputes*" clause of this contract.

(End of clause)

(b) When, in accordance with 3-405.4, incentive revision of the fee in a cost-reimbursement type supply contract is to be provided, insert the following clause. Additional instructions for use of the clause are in (c) below.

ALLOWABLE COST, INCENTIVE FEE, AND PAYMENT (1979 MAR)

(a)(1) For the performance of this contract, the Government shall pay to the Contractor

(i) the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(A) Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(B) the terms of this contract; and

(ii) a fee determined as provided in this contract.

(2) The target cost and target fee of this contract are set forth in the Schedule and shall be subject to adjustment in accordance with (n) and (o) below. As used throughout this contract the term--

(i) "target cost" means the estimated cost of this contract initially negotiated, adjusted in accordance with (n) below; and

(ii) "target fee" means the fee which was initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost of this contract initially negotiated, adjusted in accordance with (n) below.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension, profit sharing, and employee stock ownership plan contributions, the term "*costs*" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to Contractor's subcontractors under similar cost standards. In addition, when the aforementioned contributions are paid by the Contractor to the pension, profit sharing, or employee stock ownership plan funds less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If such contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes *provided* that they are paid to the fund within thirty (30) days after the close of the period covered. If payments are not made to the fund within such thirty-day period, these contributions shall be excluded from indirect cost for payment purposes until payment has been made. (*See 15-205.6(f)*). The restriction on payment more frequently than bi-weekly and the requirement of prior payment for items or services purchased directly for the contract shall not apply where the Contractor is a small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of ((j) below, make payment thereon as approved by the Contracting Officer. Normally, payment of fee shall be made to the Contractor as specified in the Schedule. However, when in the opinion of the Contracting Officer, the Contractor's performance or cost indicates that target will not be achieved, the Government shall pay on the basis of such lesser fee as is appropriate. Further when the Contractor demonstrates that his performance or cost clearly indicates that he will earn a fee significantly in excess of target fee, the Government may, in the sole discretion of the Contracting Officer, pay on the basis of such higher fee as is appropriate. After payment of eighty-five percent (85%) of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total applicable fee or one hundred thousand dollars ($100,000) whichever is less.

(d) Notwithstanding the provisions of paragraph (j) below, allowable indirect costs under this contract shall be obtained by applying overhead rate(s) established in accordance with paragraphs (e) and (f) below.

(e) Final annual overhead rates and the appropriate bases shall be established by procurement or audit determination in accordance with the procedures of Section III, Part 7, of ASPR in effect for the period covered by the proposal.

(f) The Contractor shall, within ninety (90) days after the expiration of each of its fiscal years for estimating, accumulating, and reporting contract costs, or some later date if approved by the Contracting Officer, submit to the Contracting Officer and to the cognizant audit activity a proposed final overhead rate(s) for that period based on the Contractor's actual cost experience during that period, together with supporting cost data specifying the contract(s) and/or subcontract(s) to which such rate(s) apply. Establishment of final annual overhead rate(s) shall be undertaken as promptly as practicable after receipt of the Contractor's proposal. The Contractor shall submit an executed *Certificate of Current Cost or Pricing Data* applicable to data furnished in connection with establishment of any final annual overhead rate(s).

(g) Final annual overhead rate(s) shall be set forth in a written overhead rate understanding executed by the Contractor and the appropriate Government representative. Such understanding is automatically incorporated in this contract upon execution and shall specify (i) the agreed upon final annual overhead rate(s), (ii) the base(s) to which the rate(s) apply, (iii) the periods for which the rate(s) apply, (iv) any specific overhead items treated as direct costs in the settlement, and (v) the affected contract(s) and/or subcontract(s), identifying any with advance agreements or special provisions and the rate(s) applicable thereto. The overhead rate understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(h) Pending establishment of final annual overhead rate(s) for any period, the Contractor shall be reimbursed at billing rate(s) established by the Contracting Officer or the auditor, subject to appropriate adjustment when final rate(s) for that period are established. Anticipated final annual rates will be used for billing rates. However, to prevent substantial over or under payment, billing rate(s) may at the request of either party be revised by mutual agreement, either retroactively or prospectively.

(i) Notwithstanding any other provisions of this clause, the quick closeout procedures set forth in Section III, Part 7, of ASPR in effect on the date of this contract, may be used when mutually agreeable to the Contractor and the Contracting Officer.

(j) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(k) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including without limitation, the provisions relating to patents and the provisions of (L) below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(L) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided*, that such claims are not known to the Contractor on the date of the execution of the release; and *provided further*, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

Except as provided in (p) below, payments under the assignment and claims excepted from the release shall be subject to adjustment by reason of the adjustment of fee in accordance with (o) below.

(m) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

(n) When the work under this contract (including any supplies or services which are ordered separately under, or otherwise added to, this contract) is increased or decreased by contract modification or when any equitable adjustment in the target cost is authorized under any other clause of this contract, equitable adjustments in the target cost, target fee, minimum fee, maximum fee, or any or all of them, as appropriate, shall be set forth in an amendment or supplemental agreement to this contract.

(o) The fee payable hereunder shall be the target fee increased by (*insert contractor's participation*) cents for every dollar by which the total allowable cost is less than the target cost or decreased by (*insert contractor's participation*) cents for every dollar by which the total allowable cost exceeds the target cost. In no event shall the fee be greater than .... percent nor less than .... percent, of the target cost; and, except as provided in (p) below, within these limits such fee shall be subject to adjustment, by reason of increase or decrease of total allowable cost, on account of payments under the assignment required by (L)(i) above, and claims excepted from the release required by (L)(ii) above. If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The terminations shall be otherwise accomplished pursuant to other applicable provisions of this contract.

(p) For the purpose of the adjustment of the fee in accordance with (o) above, the term "total allowable cost" shall not include allowable costs arising out of:

(i) any of the causes covered by the clause hereof entitled "Excusable Delays" to the extent they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) the taking effect, after the negotiation of the target cost of this contract, of a statute, court decision, written ruling or regulation which results in the Contractor's being required to pay or bear the burden of any tax or duty, or increase in the rate thereof;

(iii) any direct cost attributed to the Contractor's assistance or participation in litigation as required by the Contracting Officer pursuant to a provision of this contract, including the furnishing of evidence and information requested pursuant to the clause hereof entitled "Notice and Assistance Regarding Patent and Copyright Infringement";

(iv) the procurement and maintenance of additional insurance not included in the target cost and required by the Contracting Officer or claims for reimbursement for liabilities to third persons pursuant to the clause hereof entitled "Insurance—Liability to Third Persons";

(v) any claim, loss or damage resulting from a risk for which the Contractor has been relieved of liability pursuant to the clause hereof entitled "Government Property."

Except as otherwise specifically provided in this contract, all other allowable costs shall be included in the term "total allowable cost" for the purpose of the adjustment of the fee in accordance with (o) above.

(q) The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(r) Compensation for supplies (including spare parts) and services which are to be furnished under this contract pursuant to a provisioning document or Government option shall be determined in accordance with the provisions of this clause notwithstanding any inconsistent provision in such provisioning document or Government option.

(s) Any failure by the parties to agree on a final overhead rate under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "*Disputes*" clause of this contract.

(End of clause)

(c) (1) For approvals with regard to fixed-price type subcontracts providing for progress payments, pursuant to paragraph (c) of the foregoing clauses, the standards shall be the same as those governing progress payments on fixed-price type prime contracts, as provided by E-514 of Appendix E.

(2) In paragraph (L) (ii) (B) of the foregoing clauses, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; *provided*, that a corresponding increase is made in the period of retention of records required in paragraph (d) of the clause set forth in 7-104.15.

(3) In respect to paragraph (c) of the clause set forth in (b) above, generally, the payment of fee provisions in the Schedule should be based on target fee.

(4) In the case of cost-sharing contracts and cost-reimbursement type supply contracts without fee:

- **(i) insert the following sentence in lieu of the second sentence of paragraph (c) of the clause set forth above, except that, if the contract does not provide for cost-sharing, delete the parenthetical references to the Government's share:**

After payment of an amount equal to eighty percent (80%) of (the Government's share of) the total estimated cost of performance of this contract set forth in the Schedule, the Contracting Officer may withhold further payment on account of allowable cost until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed one percent (1%) of (the Government's share of) such total estimated cost or one hundred thousand dollars ($100,000), whichever is less. (1968 SEP)

- **(ii) delete the words "and any part of the fixed fee" from paragraph (k) of the clause set forth in (a) above;**
- **(iii) in contracts which provide for cost-sharing, change paragraph (a) of the clause set forth in (a) above as follows:**

(a) the allowability of costs incurred in the performance of this contract shall be determined by the Contracting Officer in accordance with:

(i) Part 2 of Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(ii) the terms of this contract.

and

(iv) change the title of the clause set forth in (a) above to "Allowable Cost and Payment".

(5) The contracting officer shall determine to his satisfaction that the estimated cost of the contract initially negotiated does not include amounts for the contingencies identified in paragraph (p) of the clause set forth in (b) above.

(6) The following shall be added to paragraph (p) of the clause set forth in (b) above if the contract contains an "Indemnification" clause in accordance with 10-701(b)(1) and 10-702(b)(1):

> or (vi) any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk, against which the Government has expressly agreed to indemnify the Contractor. (1966 APR)

(7) The amount to be withheld under paragraph (c) of the clauses shall normally be the maximum authorized by the clause except that the administrative contracting officer may, if he believes that such amount exceeds the amount necessary to protect the interests of the Government, review the status of all funds being withheld from the contractor under the particular contract concerned and under any other contracts with the contractor which he is administering and make appropriate recommendations to the procuring contracting officer. The procuring contracting officer shall decide whether to reduce the rate of withholding or whether to release a portion of the amount already reserved under the contract, as appropriate, and shall promptly advise the administrative contracting officer.

(8) Add the following as paragraph (o) of the clause in (a) above or as paragraph (t) of the clause in (b) above when the contract includes requirements under the FMS program for more than one country, or one or more countries and the United States.

> If this contract includes requirements under the FMS program for more than one country, or one or more countries and the United States, the Contractor shall prepare separate payment requests (i) for each country's requirements and, when applicable, (ii) for U.S. Government requirements. With Administrative Contracting Officer approval, a single request may be made, provided a supporting schedule is attached breaking down the total billing for each country and, when applicable, the U.S. requirement. For this purpose the Contractor shall allocate costs among customer countries in a manner acceptable to the Administrative Contracting Office. (1979 FEB)

(9) In contracts (other than facilities contracts) with educational institutions, change "Part 2" to "Part 3" in paragraph (a)(i)(A) of the clause in (a) above, and in paragraph (a)(1)(i)(A) of the clause in (b) above.

7-203.5 *Inspection of Supplies and Correction of Defects.*

(a) Except as provided in (b) below, the following clause shall be inserted in all cost-reimbursement type supply contracts.

INSPECTION OF SUPPLIES AND CORRECTION OF DEFECTS (1974 OCT)

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, end products, and when the contract does not include the clause entitled "Warranty of Technical Data," technical data), shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of any supplies or lots of supplies shall be made as promptly as practicable after delivery thereof and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of the supplies or lots of supplies last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any supplies or lots of supplies which at the time of delivery thereof are defective in material or workmanship or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) hereof, the cost of any such replacement or correction shall be included in Allowable Cost determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment," but no additional fee shall be payable with respect thereto. Such supplies or lots of supplies shall not be tendered thereafter for acceptance unless the former requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to replace or correct such supplies or lots of supplies, the Government (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under this contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of supplies not delivered, may require the delivery of such supplies, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default as provided in the clause of this contract entitled "Termination." Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) hereof, the Government may at any time require the correction or replacement by the Contractor, without cost to the Government, of supplies or lots of supplies which are defective in material or workmanship, or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require correction or replacement by the Contractor, without cost to the Government, of any such defective supplies or lots of supplies if the defects or failures are caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that such employee is habitually careless or otherwise unqualified.

(d) Corrected supplies or replaced supplies shall be subject to the provisions of this clause in the same manner and to the same extent as supplies originally delivered under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace supplies or lots of supplies which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property".

(End of clause)

(b) When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), the clause in (a) above shall be inserted in the contract except that the following shall be added as the third sentence of paragraph (a).

The inspection system shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract. (1967 AUG)

7-203.6 *Assignment of Claims*. In accordance with 7-103.8, insert the clause therein.

7-203.7 *Examination of Records by Comptroller General*. In accordance with 7-104.15, insert the clause therein.

7-203.8 *Subcontracts*.

(a) In accordance with 23-201.2, and subject to the instructions in (b) below, insert the following clause.

SUBCONTRACTS (1979 MAR)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract (as used in this clause, the term "subcontract" includes, but is not limited to, purchase orders, changes, and/or modifications thereto) which (i) is cost-reimbursement type, time and materials or labor-hour, or (ii) is fixed-price type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, or (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities.

(b) In the case of a proposed subcontract, including but not limited to purchase orders, changes, and/or modifications thereto) which (i) is cost-reimbursement type, time and materials, or labor-hour, and would involve an estimated amount in excess of $10,000, including any fee, or (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000; the advance notification required by (a) above shall include:

(1) a description of the supplies or services to be called for by the subcontract,

(2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained,

(3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof,

(4) the subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, when such data and certificate are required, by other provisions of this contract, to be obtained from the subcontractor,

(5) identification of the type of subcontract to be used,

(6) a memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations A copy of this memorandum shall be retained in the contractor's file for the use of Government reviewing authorities The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contractor in determining the total price objective and in negotiating the final price The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current, the action taken by the contractor and the subcontractor as a result, and the effect, if any, of such defective data on the total price negotiated Where the total price negotiated differs significantly from the Contractor's total price objective, the memorandum shall explain this difference,

(7) when incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee/profit plan identifying each critical performance element, management decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time, and

(8) the subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above The Contracting Officer may, in his discretion, ratify in writing any such subcontract, such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) Neither consent by the Contracting Officer to any subcontract or any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination; (i) of the acceptability of any subcontract terms or condition, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this contract; unless such approval or consent specifically provides otherwise.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation, related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above without the consent of the Contracting Officer if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of the approval. (This subparagraph (g) however, shall not be applicable to those subcontracts subject to subparagraph (k) below, if any.)

(h) The Contractor shall (i) insert in each incentive price revision or price redetermination subcontract hereunder the substance of the "Limitation on Payments" paragraph set forth in the appropriate clause prescribed by paragraph 7-108 or 7-109 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) above.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract. The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(j) The Government reserves the right to perform contractor procurement system reviews as set forth in DAR section XXIII.

(End of clause)

(b) Insert the following additional subparagraph to the clause in (a) above in accordance with 23-201.2(d).

(k) Notwithstanding approval of the Contractor's procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer. With respect to subcontracts so identified, the advance notification requirements of paragraph (a) above shall be fully applicable even though the Contractor's procurement system has been approved and those subcontracts are within the scope of the approval.

(c) In contracts with educational institutions, change "(iii)" in paragraph (a) of the clause in (a) above to read:

(iii) provides for the fabrication, purchase, rental, installation, or other acquisition of equipment or of industrial facilities.(1975 OCT)

(d) In accordance with 23-201.4, insert the Equal Opportunity Pre-Award Clearance of Subcontracts clause in 7-104.22.

7-203.9 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-203.10 *Termination*. In accordance with 8-702(a), insert the following clause

TERMINATION (1973 APR)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part

(i) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

- (i) if the settlement includes cost and fee:
  - (A) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer; *provided*, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs;
  - (B) there shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract;
  - (C) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; *provided*, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and
  - (D) there shall be included therein a portion of the fee payable under the contract determined as follows:

(I) in the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractors' termination claims, less fee payments previously made hereunder; or

(II) in the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles or services of different types, of such part of the fee as is reasonably allocable to the type of article or services under consideration) as the total number of articles or amount of services delivered to and accepted by the Government bears to the total number of articles or amount of services of a like kind called for by this contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(ii) if the settlement includes only the fee, the amount thereof will be determined in accordance with the subparagraph (i)(D) above.

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract; (ii) any claim which the Government may have against the Contractor in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of the clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41; 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(End of clause)

7-203.11 *Excusable Delays.* In accordance with 8-708, insert the following clause.

EXCUSABLE DELAYS (1969 AUG)

Except with respect to defaults of subcontractors the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to: acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity; fires, floods, epidemics, quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (i) the supplies or services to be furnished by the subcontractor were obtainable from other sources (ii) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (iii) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination." (As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.)

(End of clause)

7-203.12 *Disputes.* Insert the clause in 7-103.12.

7-203.13 Reserved.

7-203.14 *Commercial Bills of Lading Covering Shipment To or From Contractor's Plant.* In accordance with 19-217.1(b), insert the following clause.

COMMERCIAL BILL OF LADING NOTATIONS (1969 DEC)

Prior to directing any shipment on a commercial bill of lading for which the Contractor will be reimbursed transportation costs as a direct allowable cost, the Contractor shall insure that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(i) when the Government is shown as the consignor or the consignee, the notation:
"Transportation hereunder is for the U.S. Department of Defense and the actual charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government."

(ii) when the Government will not be shown as the consignor or the consignee, the notation:
"Transportation hereunder is for the U.S. Department of Defense, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government pursuant to cost-reimbursable contract No. .... This may be confirmed by contacting .... (name and address of in the contract administration office listed in the contract such as DCASR, Detroit, Michigan, 1580 E. Grand Blvd., Detroit, Michigan 48211)."

(End of clause)

7-203.15 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-203.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-203.17 *Walsh-Healey Public Contracts Act.* In accordance with 12-602, insert the clause in 7-103.17.

7-203.18 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-203.19 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-203.20 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-203.21 *Government Property.* Except in facilities contracts (see 13-101.11), insert the following clause when a Department is to furnish to the contractor, or the contractor is to acquire, Government property.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT) (1970 SEP)

(a) *Government-Furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, sub-

stitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Appendix B, a program for the utilization, maintenance, repair, protection and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.

(g) *Risk of Loss.*

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

- (i) which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of:
  - (A) all or substantially all of the Contractor's business; or
  - (B) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or
  - (C) a separate and complete major industrial operation in connection with the performance of this contract;
- (ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—
  - (A) to maintain and administer, in accordance with sound industrial practice, the program for utilization, maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or
  - (B) to establish, maintain and administer, in accordance with (d) above, a system for control of Government property;
- (iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater, or

(v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Any failure of the Contractor to act, as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers, or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) the lost, destroyed and damaged Government property;

(ii) the time and origin of the loss, destruction or damage;

(iii) all known interests in commingled property of which the Government property is a part; and

(iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of

or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

*(5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. (**This subparagraph may be omitted where it is clearly inapplicable.*)

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises where any of the Government property is located, for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government Property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government Property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government Property; *provided,* however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) *Restoration of Contractor's Premises and Abandonment.* Unless otherwise provided herein, the Government:

- (i) may abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and
- (ii) has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(End of clause)

As provided in paragraph (i) of the above clause, the contracting officer may, subject to Departmental procedures, authorize or approve use of the contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from Government property are relatively minor and the contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery through a reduction of overhead or other cost factor affecting reimbursement under the contract.

7-203.22 *Insurance—Liability to Third Persons.*

INSURANCE--LIABILITY TO THIRD PERSONS (1966 DEC)

(a) The Contractor shall procure and thereafter maintain workmen's compensation, employer's liability, comprehensive general liability (bodily injury) and comprehensive automobile liability (bodily injury and property damage) insurance, with respect to performance under this contract, and such other insurance as ....* may from time to time require with respect to performance under this contract; *provided*, that the Contractor may with the approval of ....* maintain a self-insurance program, and *provided further*, that with respect to workmen's compensation the Contractor is qualified pursuant to statutory authority. All insurance required pursuant to the provisions of this paragraph shall be in such form, in such amounts, and for such periods of time, as ....* may from time to time require or approve, and with insurers approved by ....*. (*See text at end of clause.*)

(b) The Contractor agrees, to the extent and in the manner required by ....*, to submit for the approval of ....* any other insurance maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement hereunder. (*See text at end of clause.*)

(c) The Contractor shall be reimbursed, (i) for the portion allocable to this contract of the reasonable cost of insurance as required or approved pursuant to the provisions of this clause, and (ii) without regard to and as an exception to the "Limitation of Cost" or the "Limitation of Funds" clause of this contract, for liabilities to third persons for loss of or damage to property (other than property (A) owned, occupied or used by the Contractor or rented to the Contractor, or (B) in the care, custody, or control of the Contractor), or for death or bodily injury, not compensated by insurance or otherwise, arising out of the performance of this contract, whether or not caused by the negligence of the Contractor, his agents, servants or employees, *provided* such liabilities are represented by final judgments or settlements approved in writing by the Government, and expenses incidental to such liabilities, except liabilities (I) for which the Contractor is otherwise responsible under the express terms of the clause or clauses, if any, specified in the Schedule, or (II) with respect to which the Contractor has failed to insure as required or maintain insurance as approved by ....* (*See text at end of clause.*) or (III) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (1) all or substantially all of the Contractor's business, or (2) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (3) a separate and complete major industrial operation in connection with the performance of this contract. The foregoing shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required to be submitted for approval or required to be procured and maintained pursuant to the provisions of this clause, *provided* such cost would constitute Allowable Cost under the clause of this contract entitled "Allowable Cost, Fixed Fee and Payment".

(d) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract and the risk of which is then uninsured or in which the amount claimed exceeds the amount of coverage. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. If the amount of the liability claimed exceeds the amount of coverage, the Contractor shall authorize representatives of the Government to collaborate with counsel for the insurance carrier, if any, in settling or defending such claim. If the liability is not insured or covered by bond, the Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith; *provided*, however, that the Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

In the foregoing clause, insert, in contracts of the Department of the Army, the Department of the Air Force, and the Department of the Navy, the words "the Contracting Officer," and insert, in contracts of the other Departments, the words "the Department," in the space designated by an asterisk (*).

7-203.23 *Authorization and Consent.* In accordance with 9-102.1, insert the clause in 7-103.22.

7-203.24 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-203.25 *Communist Areas.* In accordance with 6-403, insert the clause in 7-103.15.

7-203.26 *Utilization of Concerns in Labor Surplus Areas.* In accordance with 1-805.3, insert one or both of the clauses in 7-104.20.

7-203.27 *Payment for Overtime Premiums.* In accordance with 12-102.6, insert the following clause.

PAYMENT FOR OVERTIME PREMIUMS (1967 JUN)

(a) Allowable cost shall not include any amount on account of overtime premiums except when (i) specified in (d) below or (ii) paid for work—

- (A) necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;
- (B) by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;
- (C) in the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or
- (D) which will result in lower overall cost to the Government.

(b) The cost of overtime premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this contract.

(c) Any request for overtime, in addition to any amount specified in (d) below, will be for all overtime which can be estimated with reasonable certainty shall be used for the remainder of the contract, and shall contain the following:

- (i) identification of the work unit, such as the department or section in which the requested overtime will be used, together with present workload, manning and other data of the affected unit, sufficient to permit an evaluation by the Contracting Officer of the necessity for the overtime;
- (ii) the effect that denial of the request will have on the delivery or performance schedule of the contract;
- (iii) reasons why the required work cannot be performed on the basis of utilizing multishift operations or by the employment of additional personnel; and
- (iv) the extent to which approval of overtime would affect the performance or payments in connection with any other Government contracts, together with any identification of such affected contracts.

(d) The Contractor is authorized to perform overtime, in addition to that performed under (a)(ii), to the extent that the overtime premium does not exceed *................

(End of clause)

*Insert the amount, in dollars, agreed to during negotiations as representing the overtime premiums applicable to overtime not reimbursable under the exceptions contained in (a)(ii) of the clause. If it was agreed that the contract could be performed without the use of additional overtime, insert "Zero."

7-203.28 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-203.29 *Audit by Department of Defense.* Insert the clause in 7-104.41(a).

7-203.30 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the applicable clause therein.

7-203.31 *Subcontractor Cost and Pricing Data.* Insert the clause in 7-104.42(a).

7-203.32 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-203.33 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-203.34 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-203.35 *Notice of Intent to Disallow or Not Recognize Costs.* In accordance with 15-206, insert the following clause in all cost-reimbursement type and flexibly priced contracts.

NOTICE OF INTENT TO DISALLOW OR NOT RECOGNIZE COSTS (1978 AUG)

(a) Notwithstanding any other provision of this contract, the Contracting Officer may, at any time, issue to the Contractor a written notice of intent to disallow or not recognize costs. This notice will indicate the Contracting Officer's intent to take exception to specified costs being incurred, or planned for incurrence, which he has determined not to be allowable in accordance with the terms of this contract.

(b) The Contractor may, within sixty (60) days of receipt of such notification, submit a written response to the Contracting Officer, together with justification therefor, against the proposed cost exception.

(c) In the event the Contractor does not file any such written response within the sixty (60) day period in (b) above, the notice shall serve as the Contracting Officer's final decision under the provisions of the clause herein entitled "*Disputes*".

(d) The Contracting Officer shall, within sixty (60) days of receipt of any written response, either withdraw in writing the notification or issue a final decision thereon under the provisions of the clause herein entitled "*Disputes*".

(e) Failure to issue a notice pursuant to this clause shall not alter the Government's rights with respect to exception to incurred costs.

(End of clause)

7-204 Clauses To Be Used When Applicable.

7-204.1 *Clauses for Cost Reimbursement Type Supply Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses therein in addition to the clause in 7-104.3.

7-204.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the schedule language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-204.3 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-204.4 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-204.5 *Patent Indemnity*. In accordance with 9-103, insert the clause with additional applicable provisions in 7-104.5.

7-204.6 *Filing of Patent Applications*. In accordance with 9-106, insert the clause in 7-104.6.

7-204.7 *Patent Rights*. When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-204.8 *Reporting of Royalties*. In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-204.9 *Rights in Data*. In accordance with 7-104.9 insert the appropriate clause, or clauses, therein.

7-204.10 *Quality Program*. In accordance with 14-304, insert the clause in 7-104.28.

7-204.11 *Excess Profit*. In accordance with 7-104.11, insert the appropriate clause therein.

7-204.12 *Military Security Requirements*. In accordance with 7-104.12, insert the clause therein, deleting paragraphs (c) and (d) and substituting the following:

> (c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such changes cause an increase or decrease in the estimated cost or time required for performance of this contract, the estimated cost, fee, delivery schedule, or any other provision of the contract that may be affected, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause of this contract.
>
> (d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding the last sentence of paragraph (c) of this clause. (1971 APR)

7-204.13 *Preference for Certain Domestic Commodities*. In accordance with 6-305, insert the clause in 7-104.13.

7-204.14 *Gratuities*. Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

7-204.15 *Priorities, Allocations, and Allotments*. In accordance with the requirements of 1-307.2, insert the clause in 7-104.18.

7-204.16 *Limitation on Sales Commissions and Fees for Foreign Governments*. In accordance with 6-1305.6, insert the clause in 7-104.107.

7-204.17 *Employment of Ocean-Going Vessels—Ocean Transport of Government-Owned Supplies*.

(a) In accordance with 1-1404(a), insert the clause in 7-104.19(a).

(b) In accordance with 1-1404(b)(1), insert the clause in 7-104.19(b).

(c) In accordance with 1-1404(b)(2), insert the clause in 7-104.19(c).

(d) In accordance with 1-1410, insert the clause in 7-104.19(d).

7-204.18 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-204.19 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-204.20 *Make-or-Buy Program.*

(a) *Changes to Make-or-Buy Program.* In accordance with 3-902.4, insert the following clause.

CHANGES TO MAKE-OR-BUY PROGRAM (1967 APR)

The Contractor shall perform this contract in accordance with the "make-or-buy" program incorporated in this contract except as hereinafter provided. If the Contractor proposes to change the "make-or-buy" program, he shall notify the Contracting Officer thereof in writing at a time reasonably in advance of the proposed change and shall therewith submit justification in sufficient detail to permit evaluation of the proposed change. Changes in the place of performance of work on any "make" items in the "make-or-buy" program are subject to this requirement. With respect to items deferred at the time of negotiation of this contract for later addition to the "make-or-buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. This contract shall be deemed modified in accordance with such proposed change or addition upon receipt by the Contractor of the Contracting Officer's written approval thereof.

(End of clause)

(b) *Price Adjustment for Make-or-Buy Changes.* In accordance with 3-902.5, insert the following clause.

PRICE ADJUSTMENT FOR MAKE-OR-BUY CHANGES (1967 APR)

This clause applies only to items that are designated elsewhere in this contract as being "make" items or "buy" items subject to this clause. If the Contractor desires to "make" any designated "buy" item or to "buy" any designated "make" item, he shall give written notice to the Contracting Officer reasonably in advance of the proposed change and shall include significant and reasonably available cost and pricing data in sufficient detail to permit evaluation of the proposed change. Promptly thereafter, if the Contractor proceeds with the change, the Contractor and the Contracting Officer shall negotiate an equitable reduction in the contract price* to reflect any decrease in costs which should reasonably result from the change, and the contract shall be modified in writing accordingly. Failure to agree on an equitable reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

*Substitute "target cost and target fee" for "contract price" in cost-plus-incentive-fee contracts.

7-204.21 *Flight Risks.* In accordance with 10-504, insert the following clause.

FLIGHT RISKS (1975 OCT)

(a) Notwithstanding any other provision of this contract, and particularly subparagraph (g)(1) of the "Government Property" clause and paragraph (c) of the "Insurance—Liability to Third Persons" clause, the Contractor shall not (i) be relieved of liability for, damage to, or loss or destruction of, aircraft sustained during flight, or (ii) be reimbursed for liabilities to third persons for loss of or damage to property, or for death or bodily injury, which are caused by aircraft during flight, unless the flight crew members have previously been approved in writing by ....* (*See footnote at end of clause.*)

(b) For purposes of this clause:

(i) Unless otherwise specifically provided in the Schedule, the term "aircraft" means any aircraft, whether furnished by the Contractor under this contract (either before or after acceptance by the Government) or furnished by the Government to the Contractor under this contract, including all Government Property placed or installed therein or attached thereto; *provided*, however, that such aircraft and property are not covered by a separate bailment agreement.

(ii) The term "flight" means any flight demonstration, flight test, taxi test, or other flight, made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the ....* (*See footnote at end of clause.*) As to land based aircraft, "flight" shall commence with the taxi roll from a flight line and continue until the aircraft has completed the taxi roll to a flight line; as to sea planes, "flight" shall commence with the launching from a ramp and continue until the aircraft has completed its landing run and is beached at a ramp; as to helicopters, "flight" shall commence upon engagement of the rotors for the purpose of take-off and continue until the aircraft has returned to the ground and rotors are disengaged; and for vertical take-off aircraft, "flight" shall commence upon disengagement from any launching platform or device and continue until the aircraft has been re-engaged to any launching platform or device.

(iii) The term "flight crew members" means the pilot, the co-pilot and, unless otherwise specifically provided in the Schedule, the flight engineer, navigator, bombardier-navigator, and defense systems operator, when required, or assigned to their respective crew positions, to conduct any flight on behalf of the Contractor.

(c) If any aircraft is damaged, lost, or destroyed during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the estimated cost (exclusive of any fee) of this contract, whichever is less, and if the Contractor is not liable for the damage, loss or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made (i) in the estimated cost, delivery schedule, or both, and (ii) in the amount of any fee to be paid to the Contractor, and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the fee that is equitable, any fault of the Contractor, his employees, or any subcontractor, which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

*In the foregoing clause, insert in contracts of the Department of the Army, the Department of the Navy, the Department of the Air Force, and in contracts to be administered by the Defense Contract Administration Services the activity designated in combined regulation identified as Air Force Regulation 55-22, Army Regulation 95-20, NAVAIR Instruction 3710.1A, Defense Supply Agency Regulation 8210.1, dated 8 October 1971, subject, Requirements for Contractor Operating Procedures and Flight Crews, enclosure 1.

In the foregoing clause, the definition of "*aircraft*" may be appropriately modified in the Schedule if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

7-204.22 *Duty-Free Entry.*

(a) *Duty-Free Entry for Designated Items.* In accordance with 6-603.3(a), insert the clause in 7-104.31(a).

(b) *Duty-Free Entry for Items Not Identified in the Contract.* In accordance with 6-603.3(b), insert the clause in 7-104.31(b).

7-204.23 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-204.24 *Taxes.*

(a) *Contractor Not a Foreign Government.* In accordance with 11-403.2(c), insert the following clause.

TAXES (1960 JUL)

Any tax or duty from which the United States Government is exempt by agreement with the Government of ...., or from which the Contractor or any subcontractor hereunder is exempt under the laws of ...., shall not constitute an allowable cost under this contract.

(End of clause)

(b) *Foreign Government as Contractor*. In accordance with 11–403.2(d), insert the following clause.

TAXES (1960 JUL)

Any tax or duty from which the United States Government is exempt by agreement with the Government of .... or from which any subcontractor hereunder is exempt under the laws of ...., shall not constitute an allowable cost under this contract.

(End of clause)

7–204.25 *Advance Payments*. When advance payments are to be made in accordance with Appendix E, Part 4, insert the appropriate clauses in 7–104.34.

7–204.26 *Frequency Authorization*. In accordance with 7–104.61, insert the clause therein.

7–204.27 *Required Source for Jewel Bearings and Related Items*. In accordance with 1–2207.2, insert the clause in 7–104.37.

7–204.28 *General Services Administration Supply Sources*. In accordance with 5–909, insert the following clause.

GENERAL SERVICES ADMINISTRATION SUPPLY SOURCES (1977 AUG)

The Contracting Officer may issue the Contractor an authorization to utilize General Services Administration supply sources for property to be used in the performance of this contract. All property acquired under such an authorization shall be subject to the provisions of the clause of this contract entitled *"Government Property"*, except paragraphs (a) and (b) thereof.

(End of clause)

7–204.29 *Special Termination Costs*. In accordance with 8–712, insert the clause in 7–108.3.

7–204.30 *Interest*. In accordance with E–620, insert the clause in 7–104.39.

7–204.31 *United States Products (Military Assistance Program)*. In accordance with 6–703.4, insert the clause in 7–2003.51.

7–204.32 *Value Engineering*.

(a) *Use of the Incentive and Program Requirement Clauses*. In accordance with 1–1702 and 1–1707, insert the applicable clause or clauses in 7–104.44(a) and (b), as modified in (b) or (c) below.

(b) *Cost-Plus-Incentive-Fee Contracts*. Substitute the following "Sharing" provision for paragraph (e) of the applicable clause in 7–104.44(a) and (b):

(e) *Sharing*. If a VECP submitted by the Contractor pursuant to this clause is accepted, the Contractor shall share in the savings realized by the Government in accordance with the following provisions:

(1) Instant Contract.

(i) Definitions:

(A) Instant contract savings to the Contractor (ICS) is the unit cost reduction times the number of units affected in the instant contract. The proposed unit cost reduction includes estimated allowable Contractor development and implementation costs (CC). The Contractor's development and implementation costs include any subcontractor development and implementation costs and any subcontractor incentive payments (see (h) below). For purposes of this clause, Contractor development costs are those costs incurred after the Contractor has identified a specific value engineering project and prior to acceptance by the Government.

(B) Government Costs (GC) are those DoD costs which directly result from development and implementation of the VECP, such as test and evaluation of the VECP, and any increased costs in DoD operations, maintenance, and logistic support.

(ii) Calculations and Actions:

(A) Reduce the target cost of items affected by the VECP by ICS. The estimated cost for "limitation of cost" or "limitation of funds" purposes (7–203.3), if different or separately stated, should also be reduced by the same amount.

(B) If ICS exceeds GC, add 35% (20% if this is a VE Program Requirement Change (VEPRC) of the excess to minimum, target, and maximum fees relating to such items.

(C) If GC exceeds ICS, but acceptance of the VECP is still desirable due to concurrent or future savings, do not adjust minimum, target, or maximum fees, but offset the amount GC exceeds ICS against concurrent or future contract savings.

(D) If the Contractor cost of developing and implementing the VECP would result in an increase in the instant contract target cost, but the VECP is still desirable due to concurrent or future savings, equitably adjust the total target cost and fee in accordance with the "Changes" clause. Offset this increase and any GC against concurrent or future savings.

(2) Concurrent Contracts.

(i) If the VECP accepted under this contract is also used on concurrent contracts of the purchasing office for essentially the same items the Contractor shall be paid a share of any savings as calculated in (*ii*) below.

(ii) Calculations:

(A) Determine the reduction in the price of each concurrent contract(s) as a result of incorporating the VECP.

(B) Subtract from the total amount in (A) any Government costs (GC) not yet offset (if GC was greater than ICS) in (e)(1)(ii)(C) or (D) above, and any increase in the instant contract target cost, *i.e.*, if ICS was negative in (e)(1)(ii)(D). If the resulting number is positive, multiply it by 35% (20% if this is a VEPRC). Add this amount to the instant contract as a separate line item independent of the incentive sharing arrangement and without adjustment to any of the contract incentive parameters.

(3) Future Contracts.

(i) *Definition*. The term unit cost reduction for future contract sharing shall be the unit cost reduction under this instant contract without deducting any cost of development or implementation.

(ii) If the VECP accepted under this contract is used on future purchases of essentially the same item by the purchasing office, or its successor, the Contractor shall share in the savings on all affected end items scheduled for delivery not later than three years after acceptance of the first item incorporating the VECP, or until the originally scheduled delivery date of the last affected end item under the instant contract, whichever is later. When sharing on future contracts is expected, the Contractor shall be responsible for the following:

(A) Maintaining records adequate to support identification of the first delivered unit to which the VECP applies. These records are considered an integral part of contract documentation and shall be maintained for a period of three years after final payment on the contract under which the VECP was accepted.

(B) Annotating the DD Form 250, Material Inspection and Receiving Report, which applies to the initial unit covered by the VECP with the following statement: "This is the initial unit delivered which incorporates VECP No..............., Contract Modification No................, dated ...."

(iii) *Calculations*. At the time each eligible future contract is awarded:

(A) Determine the number of units scheduled to be delivered prior to expiration of the Contractor sharing period determined in (ii) above. Multiply this by the unit cost reduction as defined in (e)(3)(i).

(B) Subtract from the total amount in (A) any Government costs or instant contract increases not yet offset in (e)(1)(ii)(C) or (D), or in (e) (2)(ii)(B), or in other contracts awarded since acceptance of the VECP. If the resulting number is positive, multiply it by 35% (20% if this is a VEPRC). Add this amount to the instant contract as a separate line item independent of the incentive sharing arrangement and without adjustment to any of the contract incentive parameters.

(4) *Collateral Savings*. If an accepted VECP results in a measurable net reduction in the cognizant Military Department's overall documentable projected costs of maintenance, operation, logistic support or Government-furnished property, which exceeds any increase in costs attributable to incorporation of such VECP, including acquisition costs, the contract shall be increased by twenty percent (20%) of the projected net reduction in ascertainable collateral costs (*i.e.*, savings determined to be realized during an average year of use of the item in which the change is incorporated) and, if appliable, of the actual savings accruing from a change or reduction of Government-furnished property under the instant contract. Add this amount to the instant contract as a separate line item independent of the incentive sharing arrangement and without adjustment to any of the contract incentive parameters. However, such increase representing the Contractor's share of collateral savings shall, in no event, exceed the price of this contract or $100,000, whichever is greater. The determination of the amount of collateral savings, if any, will be made solely by the Government and shall not be subject to the 'Disputes' clause of this contract. In all cases, degradation of performance, service life, or capability shall be a consideration in the determination of actual savings to the Military Department.

(End of clause paragraph)

7-204.32(c)

(c) *Cost-Plus-Fixed Fee and Cost-Plus-Award-Fee Contracts.* Substitute the following "Sharing" provision for paragraph (e) of the applicable clause in 7-104.44(a) and/or (b):

(e) *Sharing*. If a VECP submitted by the Contractor pursuant to this clause is accepted the Contractor shall share in savings realized by the Government in accordance with the following provisions:

(1) Instant Contract.

(i) Definitions:

(A) Instant contract savings to the Contractor (ICS) is the unit cost reduction times the number of units affected in the instant contract. The proposed unit cost reduction includes estimated allowable Contractor development and implementation costs (CC). The Contractor's development and implementation costs include any subcontractor development and implementation costs and any subcontractor incentive payments (see (h) below). For purposes of this clause, Contractor development costs are those costs incurred after the Contractor has identified a specific value engineering project and prior to acceptance by the Government.

(B) Government Costs (GC) are those DoD costs which directly result from development and implementation of the VECP, such as test and evaluation of the VECP, and any increased costs in DoD operations, maintenance, and logistic support.

(ii) Calculations and Actions:

(A) If ICS exceeds GC, add 25% (15% if this is a VE Program Requirements Change (VEPRC) of the excess to the contract fee), and reduce the estimated cost of the items affected by the VECP, for "limitation of cost" or "limitation of funds" purposes (7–203.3), by ICS.

(B) If GC exceeds ICS, but acceptance of the VECP is still desirable due to concurrent or future savings, do not adjust contract fee, but offset the amount GC exceeds ICS against concurrent or future savings.

(C) If the Contractor cost of developing and implementing the VECP would result in an increase in instant contract cost, but the VECP is still desirable due to concurrent or future savings, equitably adjust the estimated cost and fee in accordance with the "Changes" clause. Offset this increase and any GC against concurrent or future savings.

(2) Concurrent Contracts.

(i) If the VECP accepted under this contract is also used on concurrent contracts of the purchasing office for essentially the same items the Contractor shall be paid a share of any savings as calculated in (ii) below.

(ii) Calculations:

(A) Determine the reduction in the price of each concurrent contract(s) as a result of incorporating the VECP.

(B) Subtract from the total amount in (A) any Government Costs (GC) not yet offset (if GC was greater than ICS) in (e)(1)(ii)(B) or (C) above, and any increase in the instant contract price, *i.e.*, if ICS was negative in (e)(1)(ii)(C). If the resulting number is positive, multiply it by 25% (15% if this is a VEPRC). Add this amount to the contract fee.

(3) Future Contracts.

(i) *Definition:* The term unit cost reduction for future contract sharing shall be the unit cost reduction under this instant contract without deducting any cost of development or implementation.

(ii) If the VECP accepted under this contract is used on future purchases of essentially the same item by the purchasing office, or its successor, the Contractor shall share in the savings on all affected end items scheduled for delivery not later than three years after acceptance of the first item incorporating the VECP, or until the originally scheduled delivery date of the last affected end item under the instant contract, whichever is later. When sharing on future contracts is expected, the Contractor shall be responsible for the following:

(A) Maintaining records adequate to support identification of the first delivered unit to which the VECP applies. These records are considered an integral part of contract documentation and shall be maintained for a period of three years after final payment on the contract under which the VECP was accepted.

(B) Annotating the DD form 250, Material Inspection and Receiving Report, which applies to the initial unit covered by the VECP with the following statement: "This is the initial unit delivered which incorporates VECP No...................., Contract Modification No......................, Dated................."

(iii) *Calculations.* At the time each eligible future contract is awarded:

(A) Determine the number of units scheduled to be delivered prior to expiration of the Contractor sharing period determined in (ii) above. Multiply this by the unit cost reduction as defined in (e)(3)(i).

(B) Subtract from the total amount in (A) any Government costs or instant contract increases not yet offset in (e)(1)(ii)(B) or (C), or in (e)(2)(ii)(B), or in other contracts awarded since acceptance of the VECP. If the resulting number is positive, multiply it by 25% (15% if this is a VEPRC).

(4) *Collateral Savings.* If an accepted VECP results in a measurable net reduction in the cognizant Military Department's overall documentable projected costs of maintenance, operation, logistic support or Government-furnished property, which exceeds any increase in costs attributable to incorporation of such VECP, including acquisition costs, the contract shall be increased by twenty percent (20%) of the projected net reduction in ascertainable collateral costs (*i.e.*, savings determined to be realized during an average year of use of the item in which the change is incor-

porated) and, if applicable, of the actual savings accruing from a change or reduction of Government-furnished property under the instant contract. However, such increase representing the Contractor's share of collateral savings shall, in no event, exceed the price of this contract or $100,000, whichever is greater. The determination of the amount of collateral savings, if any, will be made solely by the Government and shall not be subject to the "Disputes" clause of this contract. In all cases, degradation of performance, service life, or capability shall be a consideration in the determination of actual savings to the Military Department.

(End of clause paragraph)

(d) When the sharing provisions applicable to incentive contracts are to be modified in accordance with 1-1704.1(c), clause paragraph (e) in (b) above shall be further modified as follows:

(i) Change clause paragraph (e)(1)(ii) to provide substantially as follows:

> (ii) If the cost reduction proposal submitted pursuant to this clause involves an anticipated decrease in the cost of performance of this contract and is accepted by the Government, the parties agree that neither the target cost, target profit, nor ceiling price of the instant contract shall be adjusted by reason of the acceptance of such proposal. The new requirement will be incorporated into the contract by a contract modification which will state that it is made pursuant to this Value Engineering clause. When the cost of performance of this contract is increased as a result of the changes, the equitable adjustment increasing the contract price shall be in accordance with the *Changes* clause rather than under this clause, but the resulting contract modification will state that it is made pursuant to this clause. (1976 FEB)

(End of clause paragraph)

(ii) Change clause paragraph (e)(2)(ii)(B) to provide substantially as follows:

> (B) Subtract from the total amount in (A) any government costs not yet offset and any increase in the instant contract target cost. If the resulting number is positive, multiply it by 35% (20% if VEPRC). Add this amount to the instant contract as a separate line item independent of the incentive sharing arrangement and without adjustment to any of the contract incentive parameters. (1976 FEB)

(End of clause paragraph)

(iii) Substitute the definition in 7-104.44(a)(5) for the definition in clause paragraph (e)(3)(i).

(iv) Change clause paragraph (e)(3)(iii)(B) to provide substantially as follows:

> (B) Subtract from the total amount in (A) any government costs or instant contract increases not yet offset. If the resulting number is positive, multiply it by 35% (20% if VEPRC). Add this amount to the instant contract as a separate line item independent of the incentive sharing arrangement and without adjustment to any of the contract incentive parameters. (1976 FEB)

(End of clause paragraph)

7-204.33 *Limitation of Liability.*

(a) In accordance with 1-330, in the procurement of major items, insert the following clause.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

LIMITATION OF LIABILITY - MAJOR ITEMS (1979 MAR)

(a) Except as provided below and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) occurring after acceptance of the supplies delivered under this contract and resulting from any defects or deficiencies in such supplies.

(b) The foregoing limitations shall not apply when the defects or deficiencies in such supplies or the Government acceptance of such supplies resulted from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses suffered by the Government through purchase or use of the contract supplies required to be delivered to the Government under this contract, the Contractor shall be liable to the Government for damages or losses to property of the Government occurring after acceptance of the supplies delivered to the Government under this contract and resulting from any defects or deficiencies in such supplies to the extent of such insurance or reserve for self-insurance.

(d) This clause does not diminish the Contractor's obligation, to the extent otherwise arising under this contract, relating to correction, repair, replacement or other relief for any defect or deficiency in supplies delivered under this contract.

(e) The provisions of this clause shall not limit or otherwise affect the Government's rights pursuant to the following listed clauses, if included in this contract:

GROUND AND FLIGHT RISKS,
AIRCRAFT FLIGHT RISK,
GOVERNMENT PROPERTY, and
WARRANTY OF TECHNICAL DATA.

(f) In all subcontracts hereunder, except those covered by (g) below, the Contractor shall either:

(i) insert, with the advance written consent of the Contracting Officer, the substance of this clause including this paragraph (f) suitably altered to reflect the relationship of the contracting parties; or

(ii) insert the substance of the clause in 7-104.45(a), suitably altered to reflect the relationship of the contracting parties.

(g) In subcontracts for both major items for which this clause is appropriate, and other end items for which the clause in 7-104.45(a) is appropriate, the substance of both clauses shall be included, with the advance written consent of the Contracting Officer. The Contractor shall identify high unit cost items by line item and include the following preamble to this clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

(End of clause)

(b) In contracts for the purchase of both major items (see 1-330) for which the clause in (a) above is appropriate, and other contract end items for which the clause in 7-104.45(a) is appropriate, both clauses shall be included. The Contracting Officer shall identify high unit cost items by line item and include the following preamble to the Limitation of Liability - Major Items clause:

(The provisions of this clause shall apply only to those items identified in this contract as being subject to this clause.)

7-204.34 *Multi-Year Procurement.* In accordance with 1-322.5, insert the clauses in 7-104.47.

7-204.35 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-204.36 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-204.37 *Reserved.*

7-204.38 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-204.39 *First Article Approval.*

(a) In accordance with 1-1904, insert the clause in 7-104.55(a) with appropriate modifications.

(b) In accordance with 1-1904, insert the clause in 7-104.55(b) with appropriate modifications.

7-204.40 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-204.41 *United States Products and Services (Balance of Payments Programs).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-204.42 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-204.43 *Reserved.*

7-204.44 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62 except in negotiated subsistence procurements and contracts for tanker/barge shipments of bulk petroleum products.

7-204.45 *Recovery of Nonrecurring Costs on Foreign Sales of Major Defense Equipment.* Insert the clause in 7-104.64, as appropriate.

7-204.46 *Use of Excess and Near-Excess Currency.* In accordance with the requirements of 6-1110, insert the clause in 7-104.66.

7-204.47 *Production Progress Report.* In accordance with the requirements of 25-202, insert the clause in 7-104.51.

7-204.48 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3 , insert the clause in 7-104.38.

7-204.49 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-204.50 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-204.51 *Procurement of Precision Components for Mechanical Time Devices.* In accordance with 1-2207.4 , insert the clause in 7-104.46.

7-204.52 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-204.53 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-204.54 *Contractor's Identification of Changes.* In accordance with 26-802, insert a clause as provided in 7-104.86.

7-204.55 *Cost/Schedule Control Systems*. In accordance with 1-331(h) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-204.56 *Engineering Change Proposals (ECP's)*. In accordance with 26-205, insert the clause in 7-104.89.

7-204.57 *Change Order Accounting*. In accordance with 26-205, insert the clause in 7-104.90.

7-204.58 *Time of Delivery*. Insert a clause in accordance with 7-104.92.

7-204.59 *Capture and Detention*. In accordance with 10-406, insert the clause in 7-104.94.

7-204.60 *Preference For United States Flag Air Carriers*. In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-204.61 *Submission of Commercial Freight Bills to the General Services Administration for Audit*. In accordance with 19-403.2(c), insert the following clause

SUBMISSION OF COMMERCIAL FREIGHT BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (1976 FEB)

When transportation costs are reimbursed to the Contractor, the Contractor is required to furnish to the

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Washington, D. C. 20406

(or to the ACO if specified) individual commercial freight bills (or equivalent shipment data and evidence of payment) for transportation charges in excess of $500.00.

(End of clause)

7-204.62 *Privacy Act*. In accordance with 1-327.1, insert the clause in 7-104.96.

7-204.63 *Preference for Domestic Specialty Metals*. In accordance with 7-104.93, insert the applicable clause therein.

7-204.64 *Exclusionary Policies and Practices of Foreign Governments*. In accordance with 6-1312, insert the clause in 7-104.97.

7-204.65 *Hazardous Material Identification and Material Safety Data*. In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-204.66 *Geographic Distribution of Defense Subcontract Dollars*. In accordance with 1-340, insert the clause in 7-104.78 .

7-204.67 *Reserved.*

7-204.68 *Offset Arrangement.* In accordance with 6-1310.3(d), insert the clause in 7-104.105.

7-204.69 *Qualifying Country Sources as Subcontractors.* In accordance with 6-1403.4, insert the clause at 7-104.106.

7-205 Additional Clauses. The following clauses shall be inserted in cost-reimbursement type supply contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-205.1 *Alterations in Contract*. The clause in 7-105.1(a) may be inserted.

7-205.2 *Approval of Contract*. The clause in 7-105.2 may be inserted.

7-205.3 *Title and Risk of Loss*. Insert the clause in 7-103.6.

7-205.4 *Bill of Materials*. In accordance with 7-105.6, insert the clause therein.

7-205.5 *Reserved*.

7-205.6 *Stop Work Orders*. The clause in 7-105.3, if modified by changing (i) the words "the 'Termination for Convenience' clause of this contract" to "the 'Termination' clause of the contract" and (ii) the words "an equitable adjustment shall be made in the delivery schedule or contract price, or both" to "an equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected," is authorized for use in any cost-reimbursement type contract under the criteria and in accordance with the instructions in 7-105.3.

7-205.7 *Warranty of Technical Data*. In accordance with 1-324.6, insert the clause in 7-104.9(o).

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 3—Fixed-Price Research and Development Contracts

7-301 Applicability. As used throughout this Part, the term "fixed-price research and development contract" means any contract (other than a letter contract, a notice of award, or a modification not affecting new procurement) which (i) is entered into at a fixed price in an amount exceeding $2,500 (with or without any provision for price redetermination, economic price adjustment, or other form of price revision as covered in 3-404), and (ii) is for experimental, developmental, or research work. See 3-402(b) for use of types of contracts for research and development work.

7-302 Required Clauses. The following clauses shall be inserted, as required, in all fixed-price research and development contracts, except as may otherwise be indicated in this Part.

7-302.1 *Definitions*. Insert the contract clause in 7-103.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7-302.2 *Payments*.

PAYMENTS (1959 JUN)

The Contractor shall be paid, upon submission of proper invoices or vouchers, the prices stipulated herein for work delivered or rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

7-302.3 *Standards of Work*.

STANDARDS OF WORK (1959 JUN)

The Contractor agrees that the performance of work and services pursuant to the requirements of this contract shall conform to high professional standards.

(End of clause)

7-302.4 *Inspection*.

(a) The following clause shall be used where the primary contract objective is delivery of end items other than designs, drawings, or reports, except where the contracting officer determines that the use of such clause is impracticable. Where this clause, or this clause as modified in (c) below, is not used, the clause in (b) below shall be used.

INSPECTION (1976 JUL)

(a) All work under this contract shall be subject to inspection and test by the Government, to the extent practicable, at all times (including the period of performance) and places, and in any event prior to acceptance. The Government through any authorized representative may inspect the premises of the Contractor or any subcontractor engaged in the performance of this contract.

(b) The Government may reject any work that is defective or otherwise not in conformity with the requirements of this contract. If the Contractor fails or is unable to correct or to replace such work within the delivery schedule or such later time as the Contracting Officer may authorize, the Contracting Officer may accept such work at a reduction in price which is equitable under the circumstances. Failure to agree on the reduction in price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide, without additional charge, all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If the Government inspection or test is made at a point other than the premises of the Contractor or subcontractor, it shall be at the expense of the Government. All inspections and tests by the Government shall be performed in such a manner as not unduly to delay the work. Final inspection and acceptance or rejection of the work shall be made as promptly as practicable after delivery except as otherwise provided in this contract; but failure to inspect and accept, or reject the work shall neither relieve the Contractor from responsibility for such of the work as is not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any work shall not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

(End of clause)

(b) The following clause shall be inserted in all contracts subject to this Part where the clause in (a) above is not used.

INSPECTION (1959 JUN)

The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

(c) When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), the clause in (a) above shall be included in the contract, except that the following shall be added as the second sentence of paragraph (e).

The inspection system shall be in accordance with the edition of Military Specifications MIL-I-45208 in effect on the date of this contract. (1967 AUG)

7-302.5 *Assignment of Claims*. In accordance with 7-103.8, insert the clause therein.

7-302.6 *Examination of Records by Comptroller General*. In accordance with 7-104.15, insert the clause therein.

7-302.7 *Federal, State, and Local Taxes*. In accordance with 11-401, insert the appropriate clause in 7-103.10.

7-302.8 *Utilization of Small Business and Small Disadvantaged Business Concerns*. In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-302.9 ***Default.*** **In accordance with 8-710, insert the following clause.**

(a) The following clause shall be used in all fixed-price research and development contracts as defined in 7-301, except:

(i) as provided in (b) below; and

(ii) contracts with educational or nonprofit institutions which are awarded on the basis of no profit.

DEFAULT (1969 AUG)

(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written Notice of Defaults to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

(i) if the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work; *provided*, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not therefore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government and, (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause.

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

(End of clause)

(b) In contracts which do not contain a clause providing for termination for convenience of the Government, insert the following clause.

DEFAULT - ALTERNATE (1974 APR)

(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written Notice of Defaults to the Contractor terminate the whole or any part of this contract in any one of the following circumstances:

- (i) if the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or
- (ii) if the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work; *provided*, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or service to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer any of the completed or partially completed work not therefore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (i) completed work for which no separate price is stated, (ii) partially completed work, (iii) other property described above which is accepted by the Government and, (iv) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "*Disputes.*"

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (c) of this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

(End of clause)

7-302.10 *Termination for Convenience of the Government.*

(a) In accordance with 8-701, insert the clause in 7-103.21(b).

(b) In accordance with 8-704.1(a), insert the following clause.

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT (1973 APR)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in Section XV, Part 3, of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel; *provided*, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

- (i) completed or partially completed plans, drawings and information; and
- (ii) materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(End of clause)

(c) In accordance with 8-704.l(b), insert the following clause:

TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT - ALTERNATE (1974 APR)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment and miscellaneous items. In addition the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Contractor agrees to (i) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (ii) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Costs claimed, agreed to, or determined pursuant to (c) above and (e) below shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(e) Subject to the provisions of paragraph (c) above, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel; *provided*, however, that in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

(g) The Contractor agrees to transfer title and deliver to the Government, in the manner, at the time, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(i) completed or partially completed plans, drawings and information; and

(ii) materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

(End of clause)

(d) The clause in (b) above suitably altered to indicate the relationship between the prime contractor and subcontractor is suggested for use in subcontracts placed with educational institutions and when modified as prescribed in (c) above for use with other nonprofit institutions; *provided*, such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Section XV; and *provided further*, such subcontracts are placed on the no-fee or no-profit basis.

7-302.11 *Disputes*. In accordance with 7-103.12, insert the clause therein.

7-302.12 *Reserved.*

7-302.13 *Buy American Act.* In accordance with 7-104.3, insert the clause therein. When the contract involves construction work, in accordance with 7-602.20 and 7-602.24 also insert the clauses therein.

7-302.14 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-302.15 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-302.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-302.17 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-302.18 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-302.19 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-302.20 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-302.21 *Authorization and Consent.* In accordance with 9-102, insert the following clause or the clause in 7-103.22 as appropriate.

AUTHORIZATION AND CONSENT (1961 JAN)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

(End of clause)

7-302.22 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-302.23 *Clauses for Domestic Contracts.*

(a) *Patent Rights clause - Acquisition by the Government (Long Form).* When a contract is determined to fall within 9-107.3(a)(2), the following clause shall be included in the contract.

PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (LONG FORM) (1977 AUG)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*

(1) *Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraphs (b)(2) and (d) of this clause.

(2) *Greater Rights Determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9-109.6 A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (e)(2)(i) of this clause, or not later than three (3) months thereafter, or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the Contracting Officer.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

- (i) hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments;
- (ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;
  - (A) unless the Contractor, his licensee, or his assignee, demonstrates to the Government that effective steps have been taken within three (3) years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or
  - (B) to the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, welfare or safety needs, or for other public purposes stipulated in this contract;
- (iii) shall submit written reports at reasonable intervals, upon request of the Government, during the term of the patent on the Subject Invention, regarding:
  - (A) the commercial use that is being made or is intended to be made of such invention; and
  - (B) the steps taken by the Contractor or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing;
- (iv) agrees to arrange, when licensing any subject inventions, to avoid royalty charges on procurements involving Government funds, including funds derived through the Military Assistance Program of the Government or otherwise derived through the Government, and to refund any amounts received as royalty charges on any Subject Invention in procurements for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in such invention to any party; and
- (v) agrees to provide for the Government's paid-up license pursuant to paragraph (c)(i) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (c)(ii) of this clause, and for the reporting of utilization information as required by paragraph (c)(iii) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and

affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the Contracting Officer, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic nonexclusive license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention. The license shall not be revoked in that field of use and/or the geographical areas in which the contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the Contracting Officer to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the Contractor shall be given written notice of the intent to modify or revoke the license and shall be allowed thirty (30) days or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor after such notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to contest any decision concerning the modification or revocation of the license in accordance with Departmental inventions licensing regulations.

(e) *Invention identification, disclosures and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer:

- (i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;
- (ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:
  - (A) the Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and
  - (B) all Subject Inventions have been disclosed or that there are no such inventions; and
- (iii) a final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical and manual labor personnel.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.*

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

- (i) files or causes to be filed a United States or foreign application thereon, or
- (ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

- (i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or
- (ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or
- (iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

- (i) establish the procedures of paragraph (e)(1) of this clause; or
- (ii) maintain and follow such procedures; or
- (iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

- (i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or
- (ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or
- (iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or
- (iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of

the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) For the purpose of this paragraph, the term "*Contractor*" means the party awarding a subcontract and the term "*Subcontractor*" means the party being awarded a subcontract, regardless of tier.

(2) The Contractor shall include an ASPR patent rights clause determined by the Contractor to be in accordance with the policy expressed in ASPR 9-107.2 in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(End of clause)

(b) *Patent Rights Clause - Retention by the Contractor* (*Long Form*). When a contract is determined to fall within 9-107.3(a)(3), the following clause shall be included in the contract.

PATENT RIGHTS - RETENTION BY THE CONTRACTOR (LONG FORM) (1977 AUG)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*

(1) The Contractor may retain the entire right, title, and interest throughout the world or any country thereof in and to each Subject Invention disclosed pursuant to paragraph (e)(2)(i) of this clause, subject to the rights obtained by the Government in paragraph (c) of this clause. The Contractor shall include with each Subject Invention disclosure an election as to whether he will retain the entire right, title, and interest in the invention throughout the world or any country thereof.

(2) Subject to the license specified in paragraph (d) of this clause, the Contractor agrees to convey to the Government, upon request, the entire domestic right, title, and interest in any Subject Invention when the Contractor:

(i) does not elect under paragraph (b)(1) of this clause to retain such rights; or

(ii) fails to have a United States patent application filed on the invention in accordance with paragraph (j) of this clause, or decides not to continue prosecution of such application; or

(iii) at any time, no longer desires to retain title.

(3) Subject to the license specified in paragraph (d) of this clause, the Contractor agrees to convey to the Government, upon request, the entire, right, title, and interest in any Subject Invention in any foreign country when the Contractor:

(i) does not elect under paragraph (b)(1) of this clause to retain such rights in the country; or

(ii) fails to have a patent application filed in the country on the invention in accordance with paragraph (k) of this clause, or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the Contractor shall notify the Contracting Officer not less than sixty (60) days before the expiration period for any action required by the foreign patent office.

(4) A conveyance, requested pursuant to paragraph (b)(2) or (3) of this clause, shall be made by delivering to the Contracting Officer duly executed instruments (prepared by the Government) and such other papers as are deemed necessary to vest in the Government the entire right, title and interest to enable the Government to apply for and prosecute patent applications covering the invention in this or the foreign country, respectively, or otherwise establish its ownership of such invention.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(i) hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments;

(ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(A) unless the Contractor, his licensee, or his assignee, demonstrates to the Government that effective steps have been taken within three (3) years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(B) to the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, welfare or safety needs, or for other public purposes stipulated in this contract;

(iii) shall submit written reports at reasonable intervals, upon request of the Government, during the term of the patent on the Subject Invention, regarding:

(A) the commercial use that is being made or is intended to be made of such invention; and

(B) the steps taken by the Contractor or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing;

(iv) agrees to arrange, when licensing any subject inventions, to avoid royalty charges on procurements involving Government funds, including funds derived through the Military Assistance Program of the Government or otherwise derived through the Government, and to refund any amounts received as royalty charges on any Subject Invention in procurements for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in such invention to any party; and

(v) agrees to provide for the Government's paid-up license pursuant to paragraph (c)(i) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (c)(ii) of this clause, and for the reporting of utilization information as required by paragraph (c)(iii) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the Contracting Officer, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic nonexclusive license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention. The license shall not be revoked in that field of use and/or the geographical areas in which the contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the Contracting Officer to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the Contractor shall be given written notice of the intent to modify or revoke the license and shall be allowed thirty (30) days or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor after such notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to contest any decision concerning the modification or revocation of the license in accordance with Departmental inventions licensing regulations.

(e) *Invention identification, disclosures and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and timely disclosed. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer:

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:

(A) the Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and

(B) all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) a final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical and manual labor personnel.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.*

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

(i) files or causes to be filed a United States or foreign application thereon, or

(ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

(i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or

(ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or

(iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to: |

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) For the purpose of this paragraph, the term "*Contractor*" means the party awarding a subcontract and the term "*Subcontractor*" means the party being awarded a subcontract, regardless of tier.

(2) The Contractor shall include an ASPR patent rights clause determined by the Contractor to be in accordance with the policy expressed in ASPR 9-107.2 in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts contain-

ing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(j) *Filing of domestic patent applications.*

(1) With respect to each Subject Invention in which the Contractor elects to retain domestic rights pursuant to paragraph (b) of this clause, the Contractor shall have a domestic patent application filed within six (6) months after submission of the invention disclosure pursuant to paragraph (e)(2)(i) of this clause, or such longer period as may be approved in writing by the Contracting Officer for good cause shown in writing by the Contractor. With respect to such invention, the Contractor shall promptly notify the Contracting Officer of any decision not to file an application.

(2) For each Subject Invention on which a patent application is filed by or on behalf of the Contractor, the Contractor shall:

(i) within two (2) months after such filing, or within two (2) months after submission of the invention disclosure if the patent application previously has been filed, deliver to the Contracting Officer a copy of the application as filed, including the filing date and serial number;

(ii) include the following statement in the second paragraph of the specification of the application and any patents issued on the Subject Invention, "The Government has rights in this invention pursuant to Contract (or Grant) No. .... awarded by (*identify the Department*)";

(iii) within six (6) months after filing the application, or within (6) months after submitting the invention disclosure if the application has been filed previously, deliver to the Contracting Officer a duly executed and approved instrument on the form specified in ASPR 9-109.5(b) fully confirmatory of all rights to which the Government is entitled, and provide the Government an irrevocable power to inspect and make copies of the patent application file;

(iv) provide the Contracting Officer with a copy of the patent within two (2) months after a patent issues on the application; and

(v) not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Contracting Officer of any decision not to continue prosecution of the application and deliver to the Contracting Officer executed instruments granting the Government a power of attorney.

(3) For each Subject Invention in which the Contractor initially elects not to retain principal domestic rights, the Contractor shall inform the Contracting Officer promptly in writing of the date and identity of any on sale, public use, or publication of such invention which may constitute a statutory bar under 35 U.S.C. 102, which was authorized by or known to the Contractor, or any contemplated action of this nature.

(k) *Filing of foreign patent applications.*

(1) With respect to each Subject Invention in which the Contractor elects to retain principal rights in a foreign country pursuant to paragraph (b)(1) of this clause, the Contractor shall have a patent application filed on the invention in such country, in accordance with applicable statutes and regulations, and within one of the following periods:

(i) eight (8) months from the date of a corresponding United States application filed by or on behalf of the Contractor; or if such an application is not filed, six (6) months from the date the invention is submitted in a disclosure pursuant to paragraph (e)(2)(i) of this clause;

(ii) six (6) months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications when such filing has been prohibited by security reasons; or

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(iii) such longer period as may be approved in writing by the Contracting Officer.

(2) The Contractor shall notify the Contracting Officer promptly of each foreign application filed and, upon written request, shall furnish an English version of such foreign application without additional compensation.

(End of clause)

(c) *Patent Rights Clause - Deferred (Long Form).* When a contract is determined to fall within 9-107.3(a)(4), the following clause shall be included in the contract.

PATENT RIGHTS - DEFERRED (LONG FORM) (1977 AUG)

(a) *Definitions.*

(1) "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(2) "*Contract*" means any contract, agreement, grant, or other arrangement, or subcontract entered into with or for the benefit of the Government where a purpose of the contract is the conduct of experimental, developmental, or research work.

(3) "*States and domestic municipal governments*" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and any political subdivision and agencies thereof.

(4) "*Government agency*" includes an executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(5) "*To bring to the point of practical application*" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine and under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

(b) *Allocation of principal rights.*

(1) *Assignment to the Government.* After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to the Subject Invention except to the extent that greater rights are retained under paragraphs (b)(2) and (d) of this clause.

(2) *Greater Rights Determinations.* The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9-109.6 A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (e)(2)(i) of this clause, or not later than three (3) months thereafter, or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause and to the reservations and conditions deemed to be appropriate by the Contracting Officer.

(c) *Minimum rights acquired by the Government.* With respect to each Subject Invention to which the Contractor retains principal or exclusive rights, the Contractor:

(i) hereby grants to the Government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and the States and domestic municipal governments;

(ii) agrees to grant to responsible applicants, upon request of the Government, a license on terms that are reasonable under the circumstances;

(A) unless the Contractor, his licensee, or his assignee, demonstrates to the Government that effective steps have been taken within three (3) years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(B) to the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, welfare or safety needs, or for other public purposes stipulated in this contract;

(iii) shall submit written reports at reasonable intervals, upon request of the Government, during the term of the patent on the Subject Invention, regarding:

(A) the commercial use that is being made or is intended to be made of such invention; and

(B) the steps taken by the Contractor or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing;

(iv) agrees to arrange, when licensing any subject inventions, to avoid royalty charges on procurements involving Government funds, including funds derived through the Military Assistance Program of the Government or otherwise derived through the Government, and to refund any amounts received as royalty charges on any Subject Invention in procurements for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in such invention to any party; and

(v) agrees to provide for the Government's paid-up license pursuant to paragraph (c)(i) of this clause in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (c)(ii) of this clause, and for the reporting of utilization information as required by paragraph (c)(iii) of this clause whenever the instrument transfers principal or exclusive rights in any Subject Invention.

Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a Subject Invention.

(d) *Minimum rights to the Contractor.*

(1) The Contractor reserves a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title. The license shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license shall be transferable only with approval of the Contracting Officer, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic nonexclusive license retained pursuant to paragraph (d)(1) of this clause may be revoked or modified to the extent necessary to achieve expeditious practical application of the Subject Invention. The license shall not be revoked in that field of use and/or the geographical areas in which the contractor has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public. The Contractor's nonexclusive license in any foreign country reserved pursuant to paragraph (d)(1) of this clause may be revoked or modified at the discretion of the Contracting Officer to the extent the Contractor or his domestic subsidiaries or affiliates have failed to achieve the practical application of the invention in such foreign country.

(3) Before modification or revocation of the license, pursuant to paragraph (d)(2) of this clause, the Contractor shall be given written notice of the intent to modify or revoke the license and shall be allowed thirty (30) days or such longer period as may be authorized by the Contracting Officer for good cause shown in writing by the Contractor after such notice to show cause why the license should not be modified or revoked. The Contractor shall have the right to contest any decision concerning the modification or revocation of the license in accordance with Departmental inventions licensing regulations.

(e) *Invention identification, disclosures and reports.*

(1) The Contractor shall establish and maintain active and effective procedures to assure that Subject Inventions are promptly identified and timely disclosed. These procedures shall in-

clude the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of Subject Inventions, and records which show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures so that he may evaluate and determine their effectiveness.

(2) The Contractor shall furnish the Contracting Officer:

- (i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s) and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;
- (ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract listing Subject Inventions during that period and certifying that:
  - (A) the Contractor's procedures for identifying and disclosing Subject Inventions as required by this paragraph (e) have been followed throughout the reporting period; and
  - (B) all Subject Inventions have been disclosed or that there are no such inventions; and
- (iii) a final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(3) The Contractor shall obtain patent agreements to effectuate the provisions of this clause from all persons in his employ who perform any part of the work under this contract except nontechnical personnel, such as clerical and manual labor personnel.

(4) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Forfeiture of rights in unreported Subject Inventions.*

(1) The Contractor shall forfeit to the Government all rights in any Subject Invention which he fails to disclose to the Contracting Officer within six (6) months after the time he:

- (i) files or causes to be filed a United States or foreign application thereon, or
- (ii) submits the final report required by paragraph (e)(2)(iii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a Subject Invention if, within the time specified in (1)(i) or (1)(ii) of this paragraph (f), the Contractor:

- (i) prepared a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract; or
- (ii) contending that the invention is not a Subject Invention, he nevertheless discloses the invention and all facts pertinent to his contention to the Contracting Officer; or
- (iii) establishes that the failure to disclose did not result from his fault or negligence.

(3) Pending written assignment of the patent applications and patents on a Subject Invention determined by the Contracting Officer to be forfeited (such determination to be a final decision under the Disputes clause), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (f) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to Subject Inventions.

(g) *Examination of records relating to inventions.*

(1) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, documents, and other supporting data of the Contractor which the Contracting Officer reasonably deems pertinent to the discovery or identification of Subject Inventions or to determine compliance with the requirements of this clause.

(2) The Contracting Officer or his authorized representative shall have the right to examine all books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract, to determine whether any such inventions are Subject Inventions if the Contractor refuses or fails to:

(i) establish the procedures of paragraph (e)(1) of this clause; or

(ii) maintain and follow such procedures; or

(iii) correct or eliminate any material deficiency in the procedures within thirty (30) days after the Contracting Officer notifies the Contractor of such a deficiency.

(h) *Withholding of payment (not applicable to subcontracts).*

(1) Any time before final payment of the amount of this contract, the Contracting Officer may, if he deems such action warranted, withhold payment until a reserve not exceeding $50,000 or five percent (5%) of the amount of this contract, whichever is less, shall have been set aside if in his opinion the Contractor fails to:

(i) establish, maintain and follow effective procedures for identifying and disclosing Subject Inventions pursuant to paragraph (e)(1) of this clause; or

(ii) disclose any Subject Invention pursuant to paragraph (e)(2)(i) of this clause; or

(iii) deliver acceptable interim reports pursuant to paragraph (e)(2)(ii) of this clause; or

(iv) provide the information regarding subcontracts pursuant to paragraph (i)(5) of this clause.

Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(2) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of Subject Inventions required by paragraph (e)(2)(i) of this clause, an acceptable final report pursuant to (e)(2)(iii) of this clause and all past due confirmatory instruments.

(3) The Contracting Officer may, in his discretion, decrease or increase the sums withheld up to the maximum authorized above. If the Contractor is a nonprofit organization, the maximum amount that may be withheld under this paragraph shall not exceed $50,000 or one percent (1%) of the amount of this contract, whichever is less. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or subsequent payment thereof shall not be construed as a waiver of any rights accruing to the Government under this contract.

(i) *Subcontracts.*

(1) For the purpose of this paragraph, the term "*Contractor*" means the party awarding a subcontract and the term "*Subcontractor*" means the party being awarded a subcontract, regardless of tier.

(2) The Contractor shall include an ASPR patent rights clause determined by the Contractor to be in accordance with the policy expressed in ASPR 9-107.2 in every subcontract hereunder having as a purpose the conduct of experimental, developmental, or research work, unless the Contractor is directed by the Government Contracting Officer to include a particular clause. In the event of refusal by a subcontractor to accept such clause, the Contractor:

(i) shall promptly submit a written notice to the Government Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information which may expedite disposition of the matter; and

(ii) shall not proceed with the subcontract without the written authorization of the Government Contracting Officer.

(3) The Contractor shall not, in any subcontract or by using a subcontract as consideration therefor, acquire any rights in his subcontractor's Subject Invention for his own use (as distinguished from such rights as may be required solely to fulfill his contract obligations to the Government in the performance of this contract).

(4) All invention disclosures, reports, instruments, and other information required to be furnished by the subcontractor to the Government Contracting Officer under the provisions of a patent rights clause in any subcontract hereunder may, in the discretion of the Government Contracting Officer, be furnished to the Contractor for transmission to the Government Contracting Officer.

(5) The Contractor shall promptly notify the Government Contracting Officer in writing upon the award of any subcontract containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Government Contracting Officer, the Contractor shall furnish a copy of the subcontract. If there are no subcontracts containing patent rights clauses, a negative report shall be included in the final report submitted pursuant to paragraph (e)(2)(iii) of this clause.

(6) The Contractor shall identify all Subject Inventions of the Subcontractor of which he acquires knowledge in the performance of this contract and shall notify the Government Contracting Officer promptly upon the identification of the inventions.

(7) It is understood that the Government is a third party beneficiary of any subcontract clause granting rights to the Government in Subject Inventions, and the Contractor hereby assigns to the Government all rights that he would have to enforce the subcontractor's obligations for the benefit of the Government with respect to Subject Inventions. The Contractor shall not be obligated to enforce the agreements of any subcontractor hereunder relating to the obligations of the subcontractor to the Government in regard to Subject Inventions.

(End of clause)

(d) *Reserved.*

(e) *Contracts relating to Atomic Energy.* Add the following paragraph to the applicable patent rights clause (see 9-107.7).

In addition to the foregoing provisions, the Contractor agrees:

(i) to identify and call to the attention of the Contracting Officer each Subject Invention made by employees of the Contractor (except nontechnical personnel, such as clerical employees and manual laborers) and which relates to the production or utilization of special nuclear material or atomic energy within the purview of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2011-2296);

(ii) to furnish through the Contracting Officer to the Department of Energy (DOE) the required disclosure regarding each Subject Invention under (i) of this paragraph;

(iii) DOE shall have the sole power to determine whether and where a patent application relating to a Subject Invention under (i) of this paragraph shall be filed, and to determine the disposition of the title to and rights under any such application or any patent that may issue thereon. Any request for greater rights to a Subject Invention shall be made in accordance with the provisions of 41 CFR 9-9.109-6;

(iv) to obtain the execution of and delivery to DOE of all required documents relating to each Subject Invention under (i) of this paragraph and to do all other things requested, necessary, or proper to carry out any determination of DOE made under (iii) of this paragraph; and

(v) unless otherwise authorized in writing by the Contracting Officer, to include this paragraph in the Patent Rights clause of all subcontracts.

No claim for pecuniary award or compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted by the Contractor or his employees with respect to any Subject Invention covered by this paragraph. (1977 DEC)

(f) *Contracts placed for Other Government Agencies.* The agency will provide any necessary patent rights clause. See 9-107.8.

(g) *Contracts relating to Space.* When considered appropriate under 9-107.9, the following paragraph (c)(i) shall be substituted for the corresponding paragraph of the Patent Rights clause of 7-302.23(a), (b) or (c) to be included in a contract.

(c)(i) hereby grants to the Government a paid-up, nonexclusive and royalty-free license to practice and have practiced each Subject Invention (made by the Contractor) throughout the world by or on behalf of the Government, States, and municipal governments, including the practice of each such Subject Invention (i) in the manufacture, use, and disposition of any article or material, (ii) in the use of any method, or (iii) in the performance of any service, acquired by or for the Government or with funds derived through the Military Assistance Program of the Government or funds otherwise derived through the Government. In addition, the Government shall have the right to grant licenses to others, under such terms and conditions as may be prescribed, for the practice of such Subject Invention throughout the world in the design, development, manufacture, operation, maintenance and testing of communications satellite systems, and of equipment, components, and ground tracking, transmitting and receiving facilities therefor. (1975 AUG)

(End of clause paragraph)

(h) *Patent Rights Clause - Acquisition by the Government (Short Form).* **When a contract is determined to fall within 9–107.3(a)(1) and (2), the following clause may be used in place of the clause of 7–302.23(a) in contracts for basic or applied research with a nonprofit organization other than for the operation of a Government-owned research or production facility.**

PATENT RIGHTS - ACQUISITION BY THE GOVERNMENT (SHORT FORM) (1975 AUG)

(a) *Definitions.* "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(b) *Invention disclosures and reports.*

(1) The Contractor shall furnish the Contracting Officer:

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s), and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract, listing Subject Inventions during that period and certifying that all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) an acceptable final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(c) *Allocation of principal rights.*

(1) The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each Subject Invention, except to the extent that rights are retained by the Contractor under paragraph (c)(2) and (d) of this clause.

(2) The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9–109.6. A request for a determination of whether the Contractor, or the employee-inventor, is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause, or not later than three (3) months thereafter or such longer

period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to the provisions of ASPR 9-109.6(e)(2) and (3).

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title.

(e) *Employee and subcontractor agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall:

(i) obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel such as clerical and manual labor personnel;

(ii) insert in each subcontract, having experimental, developmental, or research work as one of its purposes, provisions making this clause applicable to the subcontractor and his employees; and

(iii) promptly notify the Contracting Officer of the award of any such subcontract by providing him with a copy of such subcontract and any amendments thereto.

(End of clause)

(i) *Patent Rights Clause - Deferred (Short Form).* When a contract is determined to fall within 9-107.3(a)(1) and (4), the following clause may be used in place of the clause in 7-302.23(c) in contracts for basic or applied research with a nonprofit organization other than for the operation of a Government-owned research or production facility.

PATENT RIGHTS - DEFERRED (SHORT FORM) (1975 AUG)

(a) *Definitions.* "*Subject Invention*" means any invention or discovery of the Contractor conceived or first actually reduced to practice in the course of or under this contract, and includes any art, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(b) *Invention disclosures and reports.*

(1) The Contractor shall furnish the Contracting Officer:

(i) a complete technical disclosure for each Subject Invention, within six (6) months after conception or first actual reduction to practice, whichever occurs first in the course of or under the contract, but in any event prior to any on sale, public use, or publication of such invention known to the Contractor. The disclosure shall identify the contract and inventor(s), and be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and to the extent known, the physical, chemical, biological, or electrical characteristics of the invention;

(ii) interim reports, preferably on DD Form 882, at least every twelve (12) months from the date of the contract, listing Subject Inventions during that period and certifying that all Subject Inventions have been disclosed or that there are no such inventions; and

(iii) an acceptable final report, preferably on DD Form 882, within three (3) months after completion of the contract work, listing all Subject Inventions or certifying that there were no such inventions.

(2) The Contractor agrees that the Government may duplicate and disclose Subject Invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(c) *Allocation of principal rights.*

(1) After a Subject Invention is identified, the Contractor agrees to assign to the Government the entire right, title, and interest througout the world in and to each Subject Invention, except to

the extent that rights are retained by the Contractor under paragraphs (c)(2) and (d) of this clause.

(2) The Contractor, or the employee-inventor with authorization of the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause in accordance with the procedure and criteria of ASPR 9-109.6. A request for a determination of whether the Contractor, or the employee-inventor, is entitled to retain such greater rights must be submitted to the Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (b)(1) of this clause, or not later than three (3) months thereafter or such longer period as may be authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. The information to be submitted for a greater rights determination is specified in ASPR 9-109.6(a). Each determination of greater rights under this contract normally shall be subject to the provisions of ASPR 9-109.6(e)(2) and (3).

(d) *Minimum rights to the Contractor.* The Contractor reserves a revocable, nonexclusive royalty-free license in each patent application filed in any country on a Subject Invention and any resulting patent in which the Government acquires title.

(e) *Employee and subcontractor agreements.* Unless otherwise authorized in writing by the Contracting Officer, the Contractor shall:

(i) obtain patent agreements to effectuate the provisions of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel such as clerical and manual labor personnel;

(ii) insert in each subcontract, having experimental, developmental, or research work as one of its purposes, provisions making this clause applicable to the subcontractor and his employees; and

(iii) promptly notify the Contracting Officer of the award of any such subcontract by providing him with a copy of such subcontract and any amendments thereto.

(End of clause)

7-302.24 *Reserved.*

7-302.25 *Military Security Requirements.* Insert the Military Security Requirements clause in accordance with 7-104.12.

7-302.26 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3, insert the clauses in 7-104.20.

7-302.27 *Government Delay of Work.* Insert the clause in 7-104.77.

7-302.28 *Title and Risk of Loss.* Insert the clause in 7-103.6.

7-302.29 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-302.30 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-302.31 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-302.32 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-303 Clauses To Be Used When Applicable.

7-303.1 *Clauses for Contracts Involving Construction Work.* In accordance with 7-602.23, 12-106, 18-701, and 18-703, insert the Labor Standards Provisions in 7-602.23.

7-303.2 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-303.3 *Reporting and Refund of Royalties.* In accordance with 9-110(d) and 9-111, insert the appropriate clause or clauses in 7-104.8.

7-303.4 *Excess Profit.* In accordance with 7-104.11, insert the appropriate clause therein.

7-303.5 *Preference for Certain Domestic Commodities.* In accordance with 6-305, insert the clause in 7-104.13.

7-303.6 *Priorities, Allocations, and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-303.7 *Government Property.* When the Government is to furnish, or the contractor is to acquire, Government property, insert the following clause if the contract is with an educational or nonprofit institution, if not, insert the appropriate clauses as provided in 7-104.24. Changes in the clause below, like those in 7-104.24(e), (f) and (g), may be made as therein provided.

GOVERNMENT PROPERTY (FIXED PRICE, NONPROFIT) (1972 SEP)

(a) *Government-furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use (except for such property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay. Except for Government furnished property furnished "as is", in the event that Government-furnished property is received by the Contractor in a condition not suitable for its intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision effected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal, shipping, and disposal of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided in the "Changes" clause of this contract.

(c) *Title.*

(1) Title to all property furnished by the Government shall remain in the Government.

(2) Notwithstanding subparagraph (1) above, title to equipment purchased with funds available for research, having an acquisition cost of less than $1,000, shall vest in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor shall have obtained approval of the Contracting Officer prior to acquisition of such property.

(3) Title to equipment having an acquisition cost of $1,000 or more, purchased with funds available for the conduct of research, shall vest as set forth in the contract.

(4) If title to equipment is vested pursuant to (2) or (3) above, the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract or subcontract thereunder.

(5) The Contractor shall furnish the Contracting Officer a list of all equipment acquired under subparagraph (2) above within ten (10) days following the end of the calendar quarter during which such equipment was received.

(6) All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this clause, is hereinafter collectively referred to as "Government property."

(7) Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(8) In order to define the obligations of the parties under this clause, where title to each item of facilities, special test equipment, and special tooling (other than that subject to a "Special Tooling" clause) acquired by the Contractor is to vest in the Government, title shall pass to and vest in the Government when its use in the performance of this contract commences, or upon payment therefor by the Government, whichever is earlier, whether or not title previously vested.

(d) *Property Administration*. The Contractor shall comply with the provisions of Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property*. The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance and Repair of Government Property*. The Contractor shall maintain and administer, in accordance with sound business practice, and in accordance with applicable provisions of Appendix C, a program for the utilization, maintenance, repair, protection and preservation of Government property, until disposed of by the Contractor in accordance with this clause. In the event that any damage occurs to Government property the risk of which has been assumed by the Government under this contract, the Government shall replace such items or the Contractor shall make such repair of the property as the Government directs; *provided*, however, that if the Contractor cannot effect such repair within the time required, the Contractor may reject such property. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which the Government is responsible, and an equitable adjustment will be made in any contractual provision affected by the repair or replacement of Government property made at the direction of the Government. Any repair or replacement for which the Contractor is responsible under the provision of this contract shall be accomplished by the Contractor at his own expense.

(g) *Risk of Loss*.

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage except that the Contractor shall be liable for any loss or damage to Government property provided under this contract upon its delivery to him or passage of title to the Government as provided in paragraph (c) above (including expenses incidental thereto):

(i) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of his managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) to maintain and administer, in accordance with sound industrial practice, the program for maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) to establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) which results from a risk expressly required to be insured under some other provision of this contract, or of the schedules or task orders thereunder, but only to the extent of the insurance so required to be procured and maintained or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Any failure of the Contractor to act, as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail, addressed to one of such directors, officers or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to the Government, any charge or reserve for insurance (including self-insurance funds or reserves) covering loss or destruction of or damage to the Government property, except to the extent that the risk of loss is imposed on the Contractor under (1)(iii) above, or insurance has been required under (1)(iv) above.

(3) Upon the happening of loss or destruction of or damage to any Government property, the Contractor shall notify the Contracting Officer thereof and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has directed that no such organization be employed) shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) the lost, destroyed, and damaged Government property;

(ii) the time and origin of the loss, destruction, or damage;

(iii) all known interests in commingled property of which the Government property is a part; and

(iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph (3) (including charges made to the Contractor by the Loss and Salvage Organization, except any of such charges the payment of which the Government has, at its option, assumed directly).

(4) With the approval of the Contracting Officer after loss or destruction of or damage to Government property, and subject to such conditions and limitations as may be imposed by the Contracting Officer, the Contractor may, in order to minimize the loss to the Government or in

order to permit resumption of business or the like, sell for the account of the Government any item of Government property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor, that separation is impracticable.

(5) Except to the extent of any loss or destruction of or damage to Government property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the Government property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to the Government property, and such property (other than that which is permitted to be sold) shall be returned to the Government in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph (f) above.

(6) In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss, destruction or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(7) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the "Ground and Flight Risk" clause of this contract shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. (**This subparagraph may be omitted where it is clearly inapplicable and shall be deleted when the Ground and Flight Risk clause is omitted pursuant to 10–404(b)(2).*)

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as provided for elsewhere in this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the price or costs of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property and Abandonment.* If the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i) above, except that the Government may abandon any Government property in place and thereupon all obligations of the Government regarding such abandoned property shall cease. The Government has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment, disposition pursuant to paragraph (i) above, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(End of clause)

7–303.8 *Communist Areas.* In accordance with 6–403 and 7–103.15, insert the clause in 7–103.15.

7-303.9 *Notice to the Government of Labor Disputes.* Insert the clause in 7-104.4 in all contracts involving the furnishing of production of any item on the Department of Defense Master Urgency List and in any other contract of a class or kind which the Head of the Contracting Activity concerned determines to be appropriate for the use of such a clause.

7-303.10 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-303.11 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-303.12 *Subcontracts.* In accordance with 23-201.1, insert the clause in 7-104.23.

7-303.13 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62.

7-303.14 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-303.15 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-303.16 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-303.17 *Ground and Flight Risk.* In accordance with 10-404, insert the clause in 7-104.10.

7-303.18 *Duty-Free Entry.* In accordance with 6-603.3, insert the clauses in 7-104.31.

7-303.19 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-303.20 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-303.21 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-303.22 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-303.23 *Progress Payments.* In accordance with E-510, insert one of the clauses in 7-104.35.

7-303.24 *Required Source for Jewel Bearings* ***and Related Items.*** In accordance with 1-2207.2, insert the clause in 7-104.37.

7-303.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-303.26 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-303.27 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-303.28 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein.

7–303.29 *Subcontractor Cost and Pricing Data.* In accordance with 7–104.42, insert the appropriate clause therein.

7–303.30 *United States Products (Military Assistance Program).* In accordance with 6–703.4, insert the clause in 7–2003.51.

7–303.31 *Value Engineering.* Subject to the limitations in 1–1702, insert the appropriate clause(s) in 7–104.44 as applicable.

7–303.32 *Management Systems Requirements.* In accordance with 16–827.1, insert the clause in 7–104.50.

7–303.33 *Non-Use of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade.* In accordance with 1–1404 and 1–1410, insert the appropriate clause in 7–104.19.

7–303.34 *New Material.* In accordance with 1–1208, insert the clause in 7–104.48.

7–303.35 *Limitation of Liability.* In accordance with 1–330(b), insert the appropriate clause in 7–104.45.

7–303.36 *Bills of Lading Covering Shipments From Contractor's Plant.* In accordance with the requirements of 19–217.1(a), insert the clause in 7–103.25.

7–303.37 *Special Test Equipment.* Insert the clause in 7–104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13–306.3(c)).

7–303.38 *Contract Schedule Subline Items Not Separately Priced.* In accordance with 20–304.2(c)(ii), insert the clause in 7–104.7.

7–303.39 *First Article Approval.* In accordance with 1–1904, insert the appropriate clause in 7–104.55.

7–303.40 *Order of Precedence.* In accordance with 3–501(b)Sec.C(xxxi), insert the clause in 7–2003.41.

7–303.41 *United States Products and Services (Balance of Payments Program.)* In accordance with 6–806.4, insert the clause in 7–2003.53.

7–303.42 *Identification of Expenditures in the United States.* In accordance with 6–807, insert the clause in 7–104.58.

7–303.43 *Reserved.*

7–303.44 *Care of Laboratory Animals.* In compliance with law and in furtherance of the Department of Defense policy that all aspects of investigative programs involving the use of experimental or laboratory animals be humanely conducted in accordance with recognized principles, the following clause shall be included in all contracts awarded in the United States, its possessions, and Puerto Rico, which may involve the use of such animals.

CARE OF LABORATORY ANIMALS (1974 APR)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with Section 6, P.L. 89–544, Laboratory Animal Welfare Act, 24 August 1966 as amended by P.L. 91–579, Animal Welfare Act of 1970, 24 December 1970. The Contractor shall furnish evidence of such registration to the contracting officer.

(b) The Contractor shall acquire animals used in research and development programs from a dealer licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in (a) above.

(c) In the care of any live animals used or intended for use in the performance of this contract, the Contractor shall adhere to the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences—National Research Council, and in the United States Department of Agriculture's regulations and standards issued under the Public Laws enumerated in (a) above In case of conflict between standards, the higher standard shall be used Contractor reports on portions of the contract in which animals were used shall contain a certificate stating that the animals were cared for in accordance with the principles enunciated in the *Guide for Care and Use of Laboratory Animals* prepared by the Institute of Laboratory Animal Resources, NAS-NRC, and/or in the regulations and standards as promulgated by the Agricultural Research Service, USDA, pursuant to the Laboratory Animal Welfare Act of 24 August 1966, as amended (P.L. 89-544 and P.L. 91-579).

NOTE The Contractor may request registration of his facility and a current listing of licensed dealers from the Regional Office of the Animal and Plant Health Inspection Service (APHIS), USDA, for the region in which his research facility is located The location of the appropriate APHIS Regional Office as well as information concerning this program may be obtained by contacting the Senior Staff Officer, Animal Care Staff, USDA/APHIS, Federal Center Building, Hyattsville, Maryland, 20782

(End of clause)

7-303.45 *Recovery of Nonrecurring Costs on Non-US Government Sales of Defense Equipment*. In accordance with 4-110(d), insert the clauses in 7-104.64, as appropriate.

7-303.46 *Insurance*. In accordance with 10-405, insert the clause in 7-104.65.

7-303.47 *Use of Excess and Near-Excess Currency*. In accordance with 6-1110, insert the clause in 7-104.66.

7-303.48 *Aircraft, Missile and Space Vehicle Accident Reporting and Investigation*. In accordance with 7-104.81, insert the clause therein.

7-303.49 *Procurement of Miniature and Instrument Ball Bearings*. In accordance with 1-2207.3, insert the clause in 7-104.38.

7-303.50 *Equal Opportunity Pre-Award Clearance of Subcontracts*. In accordance with 23-201.4, insert the clause in 7-104.22.

7-303.51 *Reserved*.

7-303.52 *Procurement of Precision Components for Mechanical Time Devices*. In accordance with 1-2207.4, insert the clause in 7-104.46.

7-303.53 *Payment of Interest on Contractor's Claims*. In accordance with 1-333, insert the clause in 7-104.82.

7-303.54 *Rights in Data*. In accordance with 7-104.9 insert the appropriate clause, or clauses, therein.

7-303.55 *Cost Accounting Standards*. In accordance with 3-1204, insert the clauses in 7-104.83.

7-303.56 *Contractor's Identification of Changes*. In accordance with 26-802, insert a clause as provided in 7-104.86.

7-303.57 *Cost Schedule Control Systems*. In accordance with 1-331(h) and 3-501(b) Section C (xlv), insert the clause in 7-104.87.

7-303.58 *Engineering Change Proposals (ECP's)*. In accordance with 26-205, insert the clause in 7-104.89.

7-303.59 *Change Order Accounting*. In accordance with 26-205, insert the clause in 7-104.90.

7–303.60 *Capture and Detention.* In accordance with 10–406, insert the clause in 7–104.94.

7–303.61 *Indemnification Under 10 USC 2354.* In accordance with 10–701, insert the following clause:

INDEMNIFICATION UNDER 10 U.S.C. 2354 — FIXED PRICE (1974 APR)

(a) Pursuant to the authority of 10 U.S.C. 2354, notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, damage to, or loss of use of property;

(ii) loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and

(iii) loss of, damage to, or loss of use of property of the Government;

to the extent that such a claim, loss or damage (A) arises out of the direct performance of this contract; (B) is not compensated by insurance or otherwise; and (C) results from a risk defined in this contract to be unusually hazardous. Any such claim, loss, or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer; (or in contracts with the Department of the Navy, *The Department.*)

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of lower tier subcontractors upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks theretofore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any occurrence, action or claim he learns of that reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, participate in, and supervise the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required, in regard to such settlement or defense.

(g) The Contractor shall procure and maintain, to the extent available, such insurance against unusually hazardous risks as the Contracting Officer (or in contracts with Department of the Navy, *The Department*) may from time to time require or approve. All such insurance shall be in such form, in the amounts, for the periods of time, at such rates, and with such insurers, as the Contracting Officer (or in contracts with Department of the Navy, *The Department) may from time to time require or approve. The obligations of the Government under this clause shall not apply to claims, loss or damage to the extent that insurance is available and is either required or approved pursuant to this paragraph. The Contractor shall be reimbursed the cost of any such insurance in excess of that maintained by the Contractor as of the date of this contract, to the extent the cost thereof is properly allocable to this contract and is not included in the contract price.*

(End of clause)

7-303.62 *Indemnification Under Public Law 85-804.* In accordance with 10-702, insert the following clause.

INDEMNIFICATION UNDER PUBLIC LAW 85-804 — FIXED PRICE (1977 JAN)

(a) Pursuant to Public Law 85-804 (50 U.S.C. 1431 - 1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(ii) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(iii) loss of, damage to, or loss of use of property of the Government but excluding loss of profit;

to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous or nuclear in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for:

(i) claims by the United States (other than those arising through subrogation) against the Contractor; or

(ii) losses affecting the property of such Contractor;

when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. For purposes of this clause, the term "*principal officials*" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

(A) all or substantially all of the Contractor's business, or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract.

The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the

Secretary and approved by the Contracting Officer; (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

7-303.63 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-303.64 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-303.65 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-303.66 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-303.67 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-303.68 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340. insert the clause in 7-104.78.

7-303.69 *Reserved.*

7-303.70 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-304 Additional Clauses. The following clauses shall be inserted in fixed-price research and development contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof.

7–304.1 *Changes.* **ON PROVISIONS**

CHANGES (1965 JUN)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; and (iii) place of inspection, delivery, or acceptance. If any such change causes an increase or decrease in the cost of, or the time required for performance of, this contract, or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3–807.6) and shall assure the contract includes or is modified to include a defective pricing data clause (see 7–104.29).

7–304.2 *Alterations in Contract.* The clause in 7–105.1(a) may be inserted.

7–304.3 *Approval of Contract.* The clause in 7–105.2 may be inserted.

7–304.4 *Bill of Materials.* In accordance with 7–105.6, the clause set forth therein may be inserted.

7–304.5 *Notice of Shipments.* The clause in 7–105.4 may be inserted.

7–304.6 *Reports of Work.* In accordance with 7–404.6, the clause set forth therein may be inserted.

7–304.7 *Liquidated Damages.* In accordance with 1–310, the clause in 7–105.5 may be inserted.

7–304.8 *Reserved.*

7–304.9 *Reserved.*

7–304.10 *Warranties.* In accordance with 1–324, an appropriate warranty may be inserted.

7–304.11 *Stop Work Orders.* In accordance with 7–105.3, the clause set forth therein may be inserted.

7–304.12 *Term of Performance or Delivery Date.* Insert a clause in accordance with 1–305.5. Clauses in 7–104.92 shall be used as a guide.

Part 4—Cost-Reimbursement Type Research and Development Contracts

7–400 Scope of Part. This Part sets forth uniform contract clauses for use in cost-reimbursement type research and development contracts as defined in 7–401.

7–401 Applicability. As used throughout this Part, the term "cost-reimbursement type research and development contract" shall mean any contract (other than a letter contract, notice of award, or modification not effecting new procurement) which (i) is entered into on a cost, cost-sharing or cost-plus-a-fee basis as covered in 3–405, and (ii) is for experimental, developmental, or research work.

7–402 Required Clauses. The following clauses shall be inserted, as required, in all cost-reimbursement type research and development contracts.

7–402.1 *Definitions.* In accordance with 7–103.1, insert the clause therein.

7–402.2 *Limitation of Cost or Funds.*

(a) The following clause shall be used in fully funded cost-reimbursement type research and development contracts which do not provide for cost-sharing. The words "exclusive of any fee", occurring twice in paragraph (a) of the clause, may be deleted in any contract not providing for the payment of a fee.

LIMITATION OF COST (1966 OCT)

(a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fee, will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the cost which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of this contract, exclusive of any fee, will be greater or substantially less than the then estimated cost hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; *unless* the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(End of clause)

(b) The following clause shall be used in fully funded cost-reimbursement type research and development contracts which provide for cost-sharing. The contract schedule shall include a cost-sharing formula agreed upon by the parties prior to execution of the contract. This formula shall provide for the ratio of cost-sharing with regard to both the originally established total estimated cost and any increase thereto, pursuant to (b) of the clause.

LIMITATION OF COST (COST-SHARING) (1973 MAY)

(a) It is estimated that the cost to the Government for the performance of this contract (exclusive of any fee) will not exceed the estimated cost to the Government set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost to the Government plus the share of the cost of performance agreed to be borne by the Contractor, as set forth in the Schedule. If, at any time, the Contractor has reason to believe that the costs which he expects to be incurred in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated total cost to the Government and to the Contractor then set forth in the Schedule, or if, at any time, the Contractor has reason to believe that the total cost for the performance of this contract (exclusive of any fee) will be greater or substantially less than the then estimated total cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost to the Government set forth in the Schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Terminations clause) or otherwise to incur costs in excess of the estimated total cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated total cost has been increased and shall have specified in such notice a revised estimated total cost which shall thereupon constitute the estimated total cost of performance of this contract. The increase in such estimated total cost shall be allocated in accordance with the formula set forth in the Schedule governing such increases. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost to the Government of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost to the Government set forth in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated total cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of the estimated total cost prior to such increase shall be allowable to the same extent and in the same percentage as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost to the Government set forth in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the estimated cost.

(d) In the event this contract is terminated or the estimated cost not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(End of clause)

(c) The following clause shall be used in incrementally funded cost-reimbursement type research and development contracts which do not provide for cost sharing.

LIMITATION OF FUNDS (1966 OCT)

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total amount then allotted to the contract, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request and the Contracting Officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the total amount from time to time allotted to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the amount allotted to the contract, unless and until the Contracting Officer has notified the Contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the Contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted; *unless* the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(End of clause)

(d) The following clause shall be used in incrementally funded cost-reimbursement type research and development contracts which provide for cost-sharing.

LIMITATION OF FUNDS (COST-SHARING) (1966 OCT)

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost to the Government set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost to the Government plus the share of the cost of performance agreed to be borne by the Contractor, as set forth in the Schedule.

(b) The amount presently available for payment by the Government and allotted to this contract, the items covered thereby, the Government's share of the cost thereof, and the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost to the Government set forth in the Schedule, exclusive of any fixed fee. The Contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total of the amount then allotted to the contract by the Government plus the Contractor's corresponding share, the Contractor shall notify the Contracting Officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty (60) days prior to the end of the period specified in the Schedule the Contractor will advise the Contracting Officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the Contracting Officer will, upon written request by the Contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the Contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request, and the Contracting Officer, in his discretion, may terminate on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the amount from time to time allotted by the Government to the contract, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the total of the amount then allotted to the contract by the Government plus the Contractor's corresponding share, unless and until the Contracting Officer has notified the Contractor in writing that the amount allotted by the Government has been increased and has specified in such notice an increased amount constituting the total amount then allotted by the Government to the contract. To the extent the total of the amount allotted by the Government plus the Contractor's corresponding share exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. Any increase in such estimated cost shall be allocated in accordance with the formula set forth in the Schedule governing such increases. No notice, communication or representation in any other form or from any person other than the Contracting Officer shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the total amount then allotted by the Government to the contract, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the amount allotted by the Government to the contract has been increased, any costs incurred by the Contractor in excess of the total of the amount previously allotted by the Government plus the Contractor's corresponding share shall be allowable to the same extent and in the same percentage as if such costs had been incurred after such increase in the amount allotted; *unless* the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the Contractor to exceed the amount allotted by the Government in the Schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract by the Government to allow completion of the work contemplated by this contract, the Contractor shall be entitled to that percentage of the fee set forth in the Schedule equivalent to the percentage of completion of the work contemplated by this contract.

(End of clause)

(e) In the foregoing clauses, the period of "sixty (60) days" and the percentage of "seventy-five percent (75%)" may be varied from thirty (30) to ninety (90) days and seventy-five percent (75%) to eighty-five percent (85%). The words "Task Order" or other appropriate designation may be substituted for the word "Schedule" wherever that word appears in the clauses. Where a contract is of the installment type, the clauses may be appropriately modified.

7-402.3 *Allowable Cost, Fee, and Payment.*

(a) Except as provided in (b) below, the clause in 7-203.4(a) shall be inserted in all cost-reimbursement type research and development contracts. *Additional instructions for use are in (c) below.*

(b) When, pursuant to 3-405.4, incentive revision of the fee in a cost-reimbursement type research and development contract is to be provided, the clause in 7-203.4(b) shall be included in the contract. *Additional instructions for use of the clause are in (c) below.*

(c) In the clauses prescribed in (a) and (b) above, the following changes shall be made.

(1) For approvals with regard to fixed-price type subcontracts providing for progress payments, pursuant to paragraph (c) of the clauses, the standards shall be the same as those governing progress payments on fixed-price type prime contracts, as provided by E-514 of Appendix E.

(2) In subparagraph (L)(ii)(B) the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; *provided*, that a corresponding increase is made in

the period for retention of records required in paragraph (a)(4) of the clause prescribed by 7–402.7.

(3) In respect to paragraph (c) of the clause prescribed in (b) above, generally the payment of fee provisions in the Schedule should be based on target fee.

(4) Under some circumstances the use of a sliding scale may be appropriate in paragraph (o) of the clause prescribed in (b) above (for example, $0.01 for the first $100, $0.02 for the next $100, etc.), in which case necessary changes in the wording of such paragraph (o) of the clause prescribed in (b) above are authorized.

(5) In the case of contracts, including cost-sharing contracts, without fee:

(i) change the title of the clause prescribed in (a) above to "Allowable Cost and Payment";

(ii) insert the following sentence in lieu of the second sentence of paragraph (c) of the clause prescribed in (a) above except that in contracts not providing for cost-sharing, the parenthetical references to the Government's share shall be deleted:

> After payment of an amount equal to eighty percent (80%) of (the Government's share of) the total estimated cost of performance of this contract set forth in the Schedule, the Contracting Officer may withhold further payment on account of allowable cost until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed one percent (1%) of (the Government's share of) such total estimated cost or one hundred thousand dollars ($100,000), whichever is less. (1968 SEP)

(iii) delete "and any part of the fixed fee" from paragraph (k) of the clause prescribed in (a) above.

(iv) change paragraph (a) of the clause prescribed in (a) above, as follows:

> (a) The allowability of costs incurred in the performance of this contract shall be determined by the Contracting Officer in accordance with:
>
> (i) Part 2 of Section XV of the Armed Services Procurement Regulation in effect on the date of this contract; and
>
> (ii) the terms of this contract.

(6) In contracts without fee with nonprofit institutions, "ten thousand dollars ($10,000)" may be substituted for "one hundred thousand dollars ($100,000)" in the sentence set forth in (5)(ii) above.

(7) In contracts (other than facilities contracts) with educational institutions, substitute "Part 3 of Section XV" in paragraph (a)(i)(A) of the clause prescribed in (a) above and in paragraph (a)(1)(i)(A) of the clause prescribed in (b) above.

(8) In contracts without fee with educational institutions, the second sentence of paragraph (c) of the clause prescribed in (a) above and the provision of subparagraph (5)(ii) of these additional instructions, which pertain to withholding of fee and costs, may be omitted. If the second sentence of paragraph (c) is so omitted, in the first sentence of paragraph (e) delete "and any part of the fixed fee which has been withheld pursuant to (c) above or otherwise."

(9) In the clauses prescribed above, "Task Order" or other appropriate designation may be substituted for "Schedule."

(10) When clause paragraph (c) provides for withholding, the amount to be withheld shall normally be the maximum authorized by the clause except that the administrative contracting officer may, if he believes that such amount exceeds the amount necessary to protect the interests of the Government, review the status of all funds being withheld from the contractor under the particular contract concerned and under any other contracts with the contractor which he is administering and make appropriate recommendations to the PCO. The PCO shall decide whether to reduce the rate of withholding or whether to release a portion of the amount already reserved under the contract, as appropriate, and shall promptly advise the administrative contracting officer.

7–402.4 *Standards of Work.*

STANDARDS OF WORK (1959 FEB)

The Contractor agrees that the performance of work and services, pursuant to the requirements of this contract, shall conform to high professional standards.

(End of clause)

7–402.5 *Inspection and Correction of Defects.*

(a)(1) The following clause shall be used where the primary contract objective is the delivery of end items other than designs, drawings, or reports, except when the contracting officer determines that the use of such clause is impracticable. When this clause, or this clause as modified by (a)(2), (a)(3), or (c) below, is not used, the clause in (b) below shall be used.

INSPECTION AND CORRECTION OF DEFECTS (1974 OCT)

(a) All work, which term includes technical data when the contract does not include the clause entitled "Warranty of Technical Data," under this contract shall be subject to inspection and test by the Government (to the extent practicable) at all times (including the period of performance) and places, and in any event prior to acceptance. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work, hereunder. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, final inspection, and acceptance shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than ninety (90) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other time as may be provided in the Schedule) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence, except as provided in (d) below. Except as otherwise provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be determined as provided in the clause of this contract entitled "Allowable Cost, Fixed Fee, and Payment," but no additional fee shall be payable with respect thereto. Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or may reduce any fixed fee payable under the contract (or require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (ii) in the case of articles not delivered, may require the delivery of such articles, and shall have the right to reduce any fixed fee payable under this contract (or to require repayment of any fixed fee theretofore paid) in such amount as may be equitable under the circumstances, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor or to such reduction in, or repayment of, the fixed fee shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory personnel has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of paragraph (b) above shall apply to any corrected or replacement end item or component until six months after its acceptance.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace articles which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the clause of this contract entitled "Government Property."

(End of clause)

(2) In the foregoing clause, the words "Task Order" or other appropriate designation may be substituted for the word "Schedule," as appropriate.

(3) In contracts not providing for payment of a fee, insert the following in lieu of paragraph (b) of the clause set forth in (1) above.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the Schedule) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any failure by the Contractor to comply with the requirements of this contract. Any time devoted to such correction or replacement shall not be included in the computation of the period of time specified in the preceding sentence except as provided in (d) below. Except as provided in paragraph (c) below, the allowability of the cost of any such replacement or correction shall be as provided in the clause of this contract entitled "Allowable Cost and Payment." Corrected articles shall not be tendered again for acceptance unless the former tender and the requirement of correction is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, or (ii) in the case of articles not delivered, may require the delivery of such articles, or (iii) may terminate this contract for default. Failure to agree to the amount of any such increased cost to be charged to the Contractor shall be deemed to be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(b) The following clause shall be inserted in all contracts subject to this Part when the clause in (a)(1) above is not used.

INSPECTION (1959 FEB)

The Government, through any authorized representatives, has the right at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection, or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require his subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

(End of clause)

(c) When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), the clause set forth in (a) above shall be included in the contract except that the following shall be added as the third sentence of paragraph (a):

The inspection system shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract. (1967 AUG)

7-402.6 *Assignment of Claims*. In accordance with 7-103.8, insert the clause therein.

7-402.7 *Examination of Records*. In accordance with 7-104.15, insert the clause therein. In the case of research and development contracts with nonprofit institutions and subcontracts thereunder, and pursuant to procedures approved by the Comptroller General, original documentary evidence in support of costs of the transportation of things will not be required pursuant to said clause.

7-402.8 *Subcontracts*.

(a) In accordance with the requirements in 23-201.2, and subject to the instructions in (b) and (c) below, insert the following clause.

SUBCONTRACTS (1979 MAR)

(a) The Contractor shall notify the Contracting Officer reasonably in advance of entering into any subcontract (as used in this clause, the term "subcontract" includes, but is not limited to, purchase orders, changes, and/or modifications thereto) which (i) is cost-reimbursement type, time and materials or labor-hour, or (ii) is fixed-price-type and exceeds in dollar amount either $25,000 or five percent (5%) of the total estimated cost of this contract, (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of special test equipment having a value in excess of $1,000 or of any items of industrial facilities; or (iv) has experimental, developmental, or research work as one of its purposes.

(b) In the case of a proposed subcontract, including but not limited to purchase orders, changes and/or modifications thereto which (i) is cost-reimbursement, time and materials, or labor-hour which would involve an estimated amount in excess of $25,000, including any fee, (ii) is proposed to exceed $100,000, or (iii) is one of a number of subcontracts under this contract with a single subcontractor for the same or related supplies or services which, in the aggregate are expected to exceed $100,000, the advance notification required by (a) above shall include:

(1) a description of the supplies or services to be called for by the subcontract;

(2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(4) the subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data when such data and certificate are required by other provisions of this contract to be obtained from the subcontractor;

(5) identification of the type of subcontract to be used;

(6) a memorandum of negotiation which sets forth the principal elements of the subcontract price negotiations. A copy of this memorandum shall be retained in the Contractor's file for the use of Government reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of initial or revised prices. The memorandum should include an explanation of why cost or pricing data was, or was not required, and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required, the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the Contractor is determining the total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which it was recognized in the negotiation that any cost or pricing data submitted by the subcontractor was not accurate, complete, or current; the action taken by the Contractor and the subcontractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the Contractor's total price objective, the memorandum shall explain this difference;

(7) when incentives are used, the memorandum of negotiation shall contain an explanation of the incentive fee/profit plan identifying each critical performance element, management decisions used to quantify each incentive element, reasons for incentives on particular performance characteristics, and a brief summary of trade-off possibilities considered as to cost, performance, and time; and

(8) the subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract to be obtained from the subcontractor.

(c) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) Neither consent by the Contracting Officer to any subcontract or any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination; (i) of the acceptability of any subcontract terms or condition, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this contract; unless such approval or consent specifically provides otherwise.

(f) The Contractor shall give the Contracting Officer immediate notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which in the opinion of the Contractor, may result in litigation, related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government

(g) Notwithstanding (c) above, the Contractor may enter into subcontracts within (i) and (ii) of (a) above, without the consent of the Contracting Officer, if the Contracting Officer has approved in writing the Contractor's procurement system and the subcontract is within the scope of such approval (This subparagraph (g) however, shall not be applicable to those subcontracts subject to subparagraph subject to subparagraph (k) below, if any.)

(h) The Contractor shall (i) insert in each incentive price revision or price redetermination subcontract hereunder the substance of the "Limitation on Payments" paragraph set forth in the appropriate clause prescribed by paragraph 7-108 or 7-109 of the Armed Services Procurement Regulation, including subparagraph (4) thereof, modified to omit mention of the Government and reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit the portion of subparagraph (3) thereof relating to tax credits, and (ii) include in each cost-reimbursement type subcontract hereunder a requirement that each price redetermination and incentive price revision subcontract thereunder will contain the substance of the "Limitation on Payments" provision, including subparagraph (4) thereof, modified as outlined in (i) of this paragraph.

(i) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments on the fixed-price types of subcontracts of those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in paragraphs 503 and 514 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this contract The Contractor further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts

(j) The Government reserves the right to perform contractor procurement system reviews as set forth in ASPR Section XXIII

(End of clause)

(b) Insert the following additional paragraph to the clause in (a) above, in accordance with 23-201.2(d).

> (k) Notwithstanding approval of the Contractor's procurement system, the Contractor shall not enter into certain subcontracts or classes of subcontracts set forth elsewhere in this contract without the prior written consent of the Contracting Officer. With respect to subcontracts so identified, the advance notification requirements of paragraph (a) above shall be fully applicable even though the Contractor's procurement system has been approved and those subcontracts are within the scope of the approval.

(c) In contracts with educational institutions, change "(iii)" in paragraph (a) of the clause in (a) above to read:

> (iii) provides for the fabrication, purchase, rental, installation, or other acquisition of equipment or of industrial facilities. (1975 OCT)

(d) In accordance with 23-201.4, insert the Equal Opportunity Preaward Clearance of Subcontracts clause in 7-104.22.

7-402.9 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-402.10 *Termination.* In accordance with 8-702 and 8-704, insert the appropriate clause set forth in either 7-203.10 or 7-302.10.

7-402.11 *Disputes.* In accordance with 7-103.12, insert the clause therein.

7-401.12 *Reserved.*

7-402.13 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-402.14 *Convict Labor.* In accordance with 12-201, insert the clause in 7-104.17.

7–402.15 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7–103.17.

7–402.16 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12–301, 12–302, and 12–306, insert the clauses in 7–103.16.

7–402.17 *Equal Opportunity.* In accordance with 12–807.1, insert the applicable clause in 7–103.18.

7–402.18 *Officials Not To Benefit.* In accordance with 7–103.19, insert the clause therein.

7–402.19 *Covenant Against Contingent Fees.* In accordance with 7–103.20, insert the clause therein.

7–402.20 *Authorization and Consent.* In accordance with 9–102, insert the clause in 7–302.21.

7–402.21 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9–104, insert the clause in 7–103.23.

7–402.22 *Patent Rights.* In accordance with 9–107, insert the appropriate clause as set forth in 7–302.23.

7–402.23 *Reserved.*

7–402.24 *Military Security Requirements.* Insert the Military Security Requirements clause in accordance with 7–104.12, modified in accordance with 7–204.12. In contracts without fee with educational institutions, add the following paragraphs (e), (f) and (g).

> (e) In the event a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any element thereof from an unclassified status to a classified status or from a lower classification to a higher classification, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with his established policies to continue the performance of work under the contract in compliance with such change in security classification or requirements. If, despite such reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of such change in security classification or requirements, he shall so notify the Contracting Officer in writing.
>
> (f) After receiving such written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.
>
> (g) If, upon the expiration of fifteen (15) days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of such change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in

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whole or in part. Thereupon, the Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and such termination shall be deemed a termination under the provisions of the clause of this contract entitled "Termination for the Convenience of the Government."

7-402.25 *Government Property.*

Except in facilities contracts, when a Department is to furnish to the contractor, or the contractor is to acquire, Government property, insert the following clause if the contract is with an educational or nonprofit institution; if not insert the clause in 7-203.21.

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, NONPROFIT) (1972 SEP)

(a) *Government-furnished Property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in this contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule of this contract or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provisions affected by any such delay. In the event that the Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property, or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon timely written request of the Contractor shall equitably adjust the estimated cost, or delivery or performance dates, or both, and any other contractual provision affected by the return, disposition, repair or modification. The foregoing provisions for adjustment are exclusive and the Government shall not be liable for suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished Property.*

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal, shipping, and disposal of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to subparagraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.*

(1) Title to all property furnished by the Government shall remain in the Government.

(2) Notwithstanding subparagraph (1) above, title to equipment purchased with funds available for research having an acquisition cost of less than $1,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible provided that the Contractor shall have obtained approval of the Contracting Officer prior to acquisition of such property.

(3) Title to equipment having an acquisition cost of $1,000 or more, purchased with funds available for the conduct of research, shall vest as set forth in the contract.

(4) If title to equipment is vested pursuant to (2) or (3) above, the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract or subcontract thereunder.

(5) The Contractor shall furnish the Contracting Officer a list of all equipment acquired under subparagraph (2) above within ten (10) days following the end of the calendar quarter during which such equipment was received.

(6) All Government furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this clause, is hereinafter collectively referred to as "Government property."

(7) Title to Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(8) Title to all property purchased by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost under this contract and which under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is to be reimbursed to the Contractor under this contract and which under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement or processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs.

(d) *Property Administration*. The Contractor shall comply with the provisions of Appendix C, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property*. The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance and Repair of Government Property*. The Contractor shall maintain and administer, in accordance with sound business practice, and in accordance with applicable provisions of Appendix C, a program for the utilization, maintenance, repair, protection and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Government property.

(g) *Risk of Loss*.

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) which results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of all or substantially all of the Contractor's business, or all or substantially all of the Contractor's operations at any one plant, laboratory, or separate location in which this contract is being performed;

(ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in (i) above, (A) to maintain and administer, in accordance with sound business practice, the program for utilization, maintenance, repair, protection and preservation of Government property as required by (f) above, or to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under (f) above, or (B) to establish, maintain and administer, in accordance with (d) above, a system for control of Government property;

(iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the schedule;

(iv) which results from a risk expressly required to be insured under some other provisions of this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Any failure of the Contractor to act as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail, addressed to one of such directors, officers, or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system or occurred during such time as an approved program or system for control of Government property was maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provision of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now or hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

(i) the lost, destroyed, and damaged Government property;

(ii) the time and origin of the loss, destruction, or damage;

(iii) all known interests in commingled property of which the Government property is a part; and

(iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action as the Contracting Officer directs.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction or damage, and upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including assistance in the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

*(5) If this contract is for the development, production, modification, maintenance or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. (*This subparagraph may be omitted where it is clearly inapplicable.*)

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises wherein any of the Government property is located, for the purpose of inspecting the Government property.

(i) *Disposition of Government Property.* Upon completion or expiration of this contract, or at such earlier dates as may be fixed by the Contracting Officer, any Government property which has not been consumed in the performance of this contract, or which has not been disposed of as provided for elsewhere in this clause, or for which the Contractor has not otherwise been relieved of responsibility, shall be disposed of in the same manner, and subject to the same procedures, as is provided in paragraph (g) of the clause of this contract entitled "Termination for the Convenience of the Government" with respect to termination inventory. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract, or shall otherwise be credited to the cost of the work covered by this contract, or shall be paid in such other manner as the Contracting Officer may direct. Pending final disposition of such property, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation thereof.

(j) *Removal of Government Property and Abandonment.* If the Contractor determines any Government property to be in excess of his needs under this contract, such Government property shall be disposed of in the same manner as provided by paragraph (i) above, except that the Government may abandon any Government property in place and thereupon all obligations of the Government regarding such abandoned property shall cease. Unless otherwise provided herein, the Government has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment, disposition pursuant to paragraph (i) above, nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(End of clause)

7-402.26 *Insurance—Liability to Third Persons.*

(a) Except as provided in (b) below, in accordance with 7-203.22, insert the clause therein. If the contractor claims partial immunity from tort liability as a state agency or as a charitable institution (as where work may be performed under the contract in a place or under conditions where the contractor is not immune from tort liability), the following may be added to the clause in 7-203.22:

(e) Notwithstanding paragraphs (a) and (c) of this clause, (i) the Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder; and (ii) the Contractor need not procure or maintain insurance coverage as provided in paragraph (a) of this clause; *provided*, the Contractor may obtain any insurance coverage he deems necessary subject to approval by the Contracting Officer as to form, amount, and duration, in which event the Contractor shall be reimbursed (A) for the cost of such insurance and (B) to the extent provided in paragraph (c) above, for liabilities to third persons for which the Contractor has obtained insurance coverage as provided in this paragraph, but for which such coverage is insufficient in amount. (1962 SEP)

In the foregoing clause, substitute in contracts of Departments other than the Department of the Army, the Department of the Air Force, and the Department of the Navy, the words "the Department" for the words "the Contracting Officer".

(b) If the contractor claims total immunity from tort liability as a state agency or as a charitable institution, the following clause may be used in lieu of the clause in 7-203.22:

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

LIABILITY TO THIRD PERSONS (1960 OCT)

(a) The Government does not assume any liability to third persons, nor will the Government reimburse the Contractor for his liability to third persons, with respect to loss due to death, bodily injury, or damage to property resulting in any way from the performance of this contract or any subcontract hereunder.

(b) The Contractor shall give the Government or its representatives immediate notice of any suit or action filed, or prompt notice of any claim made, against the Contractor arising out of the performance of this contract, the cost and expense of which may be reimbursable to the Contractor under the provisions of this contract. The Contractor shall furnish immediately to the Government copies of all pertinent papers received by the Contractor. The Contractor shall, if required by the Government, authorize representatives of the Government to settle or defend any such claim and to represent the Contractor in or take charge of any litigation in connection therewith. The Contractor may, at his own expense, be associated with the representatives of the Government in the settlement or defense of any such claim or litigation.

(End of clause)

7–402.27 *Utilization of Labor Surplus Area Concerns*. In accordance with 1–805.3, insert the clause in 7–104.20.

7–402.28 *Payment for Overtime Premiums*. In accordance with 12–102, insert the clause in 7–203.27.

7–402.29 *Competition in Subcontracting*. In accordance with 7–104.40, insert the clause therein.

7–402.30 *Audit by Department of Defense*. In accordance with 7–104.41(a), insert the clause therein.

7–402.31 *Price Reduction for Defective Cost or Pricing Data*. In accordance with 7–104.29(a), insert the clause therein.

7–402.32 *Subcontractor Cost and Pricing Data*. In accordance with 7–104.42(a), insert the clause therein.

7–402.33 *Reserved.*

7–402.34 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era*. Insert the clause in 7–103.27.

7–402.35 *Affirmative Action for Handicapped Workers*. Insert the clause in 7–103.28.

7–402.36 *Clean Air and Water*. In accordance with 1–2302.2, insert the clause in 7–103.29.

7–402.37 *Notice of Intent to Disallow or Not Recognize Costs*. Insert the clause in 7–203.35.

7–403 Clauses To Be Used When Applicable.

7–403.1 *Clauses for Contracts Involving Construction Work:*

(a) In accordance with 18–703, insert the clauses in 7–602.23.

(b) In accordance with 7–602.20 and 7–602.24, insert the clauses therein.

7–403.2 *Filing of Patent Applications*. In accordance with 9–106, insert the clause in 7–104.6.

7–403.3 *Reporting of Royalties*. In accordance with 9–110 (d), insert the clause in 7–104.8(a).

7–403.4 *Excess Profit*. In accordance with 7–104.11, insert the clause therein.

7–403.5 *Excusable Delays*. In accordance with 8–708, insert the clause in 7–203.11.

7–403.6 *Preference for Certain Domestic Commodities.* In accordance with Section VI, Part 3, insert the clause in 7–104.13.

7–403.7 *Priorities, Allocations, and Allotments.* In accordance with 1–307.2, insert the clause in 7–104.18.

7–403.8 *Communist Areas.* In accordance with 6–403, insert the clause in 7–103.15.

7–403.9 *Negotiated Overhead Rates - Predetermined.*

(a) In accordance with 3–704, insert the following clause.

NEGOTIATED OVERHEAD RATES—PREDETERMINED (1978 AUG)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment", the allowable indirect costs under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than three (3) months after the expiration of his fiscal year shall submit to the Contracting Officer with a copy to the cognizant audit activity, a proposed predetermined overhead rate or rates based on the Contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the Armed Services Procurement Regulation, Section XV, Part 3, as in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the effective date of this contract shall be incorporated into the contract schedule. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties. Such agreement shall be automatically incorporated into this contract upon execution and shall specify (i) the agreed predetermined overhead rates, (ii) the bases to which the rates apply, (iii) the fiscal year unless the parties agree to a different period for which the rates apply, and (iv) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the Schedule of this contract the parties fail to agree to a predetermined overhead rate or rates it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "*Allowable Cost, Fee, and Payment*" clause of the contract.

(g) Allowable indirect costs for the period until the end of the Contractor's fiscal year during which performance begins shall be obtained by applying the predetermined overhead rate set forth in the Schedule to the bases set forth therein.

(End of clause)

(b) In the case of a facilities contract, change "Part 3" to "Part 5" in paragraph (c) of the clause in (a) above.

7–403.10 *Notice to the Government of Labor Disputes.* In accordance with 7–104.4, insert the clause therein.

7–403.11 *Gratuities.* In accordance with 7–104.16, insert the clause therein.

7–403.12 *Limitation on Withholding of Payments.*

(a) Except as provided in (b) below the following clause shall be inserted in contracts which include more than one clause or Schedule provision authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (1959 FEB)

If more than one clause or Schedule provision of this contract authorized the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause or Schedule provision at that time; *provided* that this limitation shall not apply to:

(i) withholdings pursuant to any clause relating to wages or hours of employees;
(ii) withholding not specifically provided for by this contract; and
(iii) the recovery of overpayments.

(End of clause)

(b) The clause in (a) above is not required when:

(i) the contracting officer or contracting activity determines that the withholding limitation in the said clause is incompatible with the purpose of the particular withholding provisions involved; or
(ii) all of the contract clauses or Schedule provisions (in excess of one) which provide for the withholding of payments either (A) are exempt from the limitations in the clause set forth in (a) above under the proviso thereof, or (B) provide that their withholding provisions do not require any additional withholdings where the amounts required to be withheld under them are being withheld under other provisions of the contract.

If it is determined that the withholding limitation in the clause set forth in (a) above is incompatible with the purpose of particular withholding provisions, the said clause may be omitted or modified to make it inapplicable to such withholding provisions.

7-403.13 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-403.14 *Changes to Make-or-Buy Program.* In accordance with Section III, Part 9, insert the clauses in 7-204.20.

7-403.15 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-403.16 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-403.17 *Duty-Free Entry.* In accordance with Section VI, Part 6, insert the appropriate clause or clauses in 7-104.31.

7-403.18 *Duty-Free Entry of Qualifying Country End Products and Supplies.* In accordance with 6-603.3, insert the clause in 7-104.32.

7-403.19 *Taxes.* In accordance with 11-403, insert one of the clauses in 7-204.24.

7-403.20 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-403.21 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502 (b) and (c) according to the instructions stated in those paragraphs.

7-403.22 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-403.23 *General Services Administration Supply Sources.* In accordance with 5-909, insert the clause in 7-204.28.

7-403.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-403.25 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-403.26 *United States Products (Military Assistance Program).* In accordance with 6-703.4, insert the clause in 7-2003.51.

7-403.27 *Value Engineering.* Subject to the limitations in 1-1702, insert the appropriate clause(s) in 7-104.44, substituting the "Sharing" paragraph (e) in 7-204.32(b) or (c) for paragraph (e) of the clause in 7-104.44, as applicable.

7-403.28 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-403.29 *Non-Use of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade.* In accordance with 1-1404, insert the clause in 7-104.19 (d).

7-403.30 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-403.31 *Special Termination Costs.* In accordance with 8-712, insert the clause in 7-108.3.

7-403.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-403.33 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3(c)).

7-403.34 *First Article Approval.* In accordance with Section I, Part 19, insert the appropriate clause in 7-104.55.

7-403.35 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-403.36 *United States Products and Services (Balance of Payments Program).* In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-403.37 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-403.38 *Reserved.*

7-403.39 *Care of Laboratory Animals.* In accordance with 7-303.44, insert the clause therein.

7-403.40 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-403.41 *Material Inspection and Receiving Report.* In accordance with 7-104.62, insert the clause therein.

7–403.42 *Recovery of Nonrecurring Costs on Foreign Sales of Major Defense Equipment.* In accordance with 4–109(a), insert the applicable clause in 7–104.64.

7–403.43 *Use of Excess and Near Excess Currency.* In accordance with 6–1110, insert the clause in 7–104.66.

7–403.44 *Limitation of Liability.* In accordance with 1–330, insert the appropriate clause in 7–104.45(a) or 7–204.33.

7–403.45 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7–104.81, insert the clause therein.

7–403.46 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1–2207.3, insert the clause in 7–104.38.

7–403.47 *Procurement of Precision Components for Mechanical Time Devices.* In accordance with 1–2207.4, insert the clause in 7–104.46.

7–403.48 *Payment of Interest on Contractors' Claims.* In accordance with 1–333, insert the clause in 7–104.82.

7–403.49 *Rights in Data.* In accordance with 7–104.9 insert the appropriate clause, or clauses, therein.

7–403.50 *Cost Accounting Standards.* In accordance with 3–1204, insert the clauses in 7–104.83.

7–403.51 *Contractor's Identification of Changes.* In accordance with 26–802, insert a clause as provided in 7–104.86.

7–403.52 *Cost/Schedule Control Systems.* In accordance with 1–331(h) and 3–501(b) Section C (xlv), insert the clause in 7–104.87.

7–403.53 *Engineering Change Proposals (ECP's).* In accordance with 26–205, insert the clause in 7–104.89.

7–403.54 *Change Order Accounting.* In accordance with 26–205, insert the clause in 7–104.90.

7–403.55 *Capture and Detention.* In accordance with 10–406, insert the clause in 7–104.94.

7–403.56 *Indemnification Under 10 USC 2354.* In accordance with 10–701, insert the following clause.

INDEMNIFICATION UNDER 10 U.S.C. 2354 — COST REIMBURSEMENT (1974 APR)

(a) Pursuant to the authority of 10 U.S.C. 2354, notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

- (i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, bodily injury (including sickness or disease), or loss of, damage to, or loss of use of property;
- (ii) loss of or damage to property of the Contractor, and loss of use of such property, but excluding loss of profit; and
- (iii) loss of, damage to, or loss of use of property of the Government;

to the extent that such a claim, loss or damage (A) arises out of the direct performance of this contract; (B) is not compensated by insurance or otherwise; and (C) results from a risk defined in this contract to be unusually hazardous. Any such claim, loss, or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for any such claim, loss or damage that results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or (iii) a separate and complete major industrial operation in connection with the performance of this contract. The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement (except for subcontracts which are covered by paragraph (d) below) unless such assumption of liability has been specifically approved by the Contracting Officer; (or in contracts with the Department of the Navy, *The Department*).

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. Such payments shall be made from funds as stated in 10 U.S.C. 2354. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of papers, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of lower tier subcontractors upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall entitle the Contractor or the Government, or both, to direct, participate in, and supervise the settlement or defense of relevant actions and claims. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to persons to whom the subcontractors may be liable.

(e) If insurance coverage maintained by the Contractor on the date of the execution of this contract is reduced, the liability of the Government under this clause shall not, by reason of such reduction, be increased to cover risks theretofore insured, unless the Contracting Officer consents thereto in consideration of an equitable adjustment to the Government, if appropriate, of the price in a fixed-price contract, or the fee in a cost-reimbursement type contract, in such amount as the parties may agree.

(f) In addition to the Contractor's responsibilities under the "Insurance—Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any occurrence he learns of that reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, participate in, and supervise the settlement or defense of any such claim or action. The cost of insurance (including self insurance), covering a risk defined in this contract as unusually hazardous, shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) The "Limitation of Cost" clause of this contract does not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost, Fee, and Payment" clause of this contract.

(h) For purposes of this clause, a claim, loss or damage shall be considered to have arisen out of the direct performance of this contract if the cause for such claim, loss or damage occurred during the period of performance of this contract or as a result of the performance of this contract.

(End of clause)

7-403.57 *Indemnification Under Public Law 85-804 — Cost-Reimbursement Type Contracts*. In accordance with 10-702, insert the following clause.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

INDEMNIFICATION UNDER PUBLIC LAW 85-804 — COST-REIMBURSEMENT TYPE CONTRACTS (1974 APR)

(a) Pursuant to Public Law 85–804 (50 U.S.C. 1431 - 1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

- (i) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;
- (ii) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and
- (iii) loss of, damage to, or loss of use of property of the Government but excluding loss of profit;

to the extent that such a claim, loss or damage (A) arises out of or results from a risk defined in this contract to be unusually hazardous or nuclear in nature and (B) is not compensated by insurance or otherwise. Any such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b) The Government shall not be liable for:

- (i) claims by the United States (other than those arising through subrogation) against the Contractor; or
- (ii) losses affecting the property of such Contractor;

when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. For purposes of this clause, the term "*principal officials*" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of:

- (A) all or substantially all of the Contractor's business, or
- (B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or
- (C) a separate and complete major industrial operation in connection with the performance of this contract.

The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Secretary and approved by the Contracting Officer (or in contracts with the Department of the Navy, *The Department*). When the Government has assumed liability for subcontracts, the term "*Contractor*" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Secretary or his representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous or nuclear in nature. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause, and shall entitle the Government at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to his obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

* (e) If insurance coverage or other financial protection program approved by the Secretary is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) In addition to the Contractor's responsibilities under the "Insurance — Liability to Third Persons" clause of this contract, which are hereby made applicable to claims under this clause, the Contractor shall (i) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (ii) furnish evidence or proof of any claim, loss or damage covered by this clause in the manner and form required by the Government, and (iii) to the extent required by the Government, permit and authorize the Government to direct, control or assist in the settlement or defense of any such claim or action. The cost of insurance (including self insurance), covering a risk defined in this contract as unusually hazardous or nuclear in nature shall not be reimbursed either as a direct or indirect cost except to the extent that such insurance has been required or approved under the "Insurance—Liability to Third Persons" clause hereof.

(g) "Limitation of Cost" / "Limitation of Funds" clauses of this contract do not apply to the Government's obligations under this clause. Such obligations shall be excepted from the release required under the "Allowable Cost" clause of this contract.

(End of clause)

7-403.58 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-403.59 *Submission of Commercial Freight Bills to the General Services Administration for Audit.* In accordance with 19-403.2(c), insert the clause in 7-204.61.

7-403.60 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-403.61 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-403.62 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-403.63 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-403.64 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-403.65 *Reserved.*

7-403.66 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-404 Additional Clauses. The following clauses shall be inserted in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-404.1 *Changes.*

CHANGES (1967 APR)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following:

(i) drawings, designs, or specifications;
(ii) method of shipment or packing; and
(iii) place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the estimated cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) in the estimated cost or delivery schedule, or both;
(ii) in the amount of any fixed fee to be paid to the Contractor; and
(iii) in such other provisions of the contract as may be affected, contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted, may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-404.2 *Alterations in Contract*. In accordance with 7-105.1(a), insert the clause therein.

7-404.3 *Approval of Contract*. In accordance with 7-105.2, insert the clause therein.

7-404.4 *Bill of Materials*. In accordance with 7-105.6, insert the clause therein.

7-404.5 *Stop Work Orders*. The clause in 7-105.3, if modified as prescribed in 7-205.6, is authorized for use under the criteria and in accordance with the instructions in 7-105.3.

7-404.6 *Reports of Work*.

REPORTS OF WORK (1960 JUL)

(a) The Contractor shall submit reports making full disclosure of all work done and the results thereof, in the manner, at the times, and to the extent set forth in the Schedule, *provided* that, unless otherwise specified in the Schedule, the Contractor shall submit such reports in triplicate from time to time as requested and upon completion (or earlier termination) of the work. Except as may be otherwise specified in the Schedule, or unless the Contractor is otherwise instructed, the Contractor shall, upon completion (or earlier termination) of the work, deliver any working drawings and specifications of any prototypes as may have been developed.

(b) If the Contractor becomes unable to complete the contract work and to deliver at the time specified in the Schedule because of technical difficulties, notwithstanding the exercise of good faith and diligent efforts in performance of the work, he shall give the Contracting Officer written notice of the anticipated delays with reasons therefor not less than forty-five (45) days before the completion date specified in the Schedule or within such time as the Contracting Officer deems sufficient. When notice is so required, the Contracting Officer may, in his discretion, extend the time specified in the Schedule for such period as he deems advisable.

(End of clause)

In the above clause, the words "Task Order" or other appropriate designation may be substituted for the word "Schedule," as appropriate. Subparagraph (a) may be used without subparagraph (b). The last sentence of subparagraph (b) may be omitted.

7-404.7 *Title and Risk of Loss*. In accordance with 7-103.6, insert the clause therein.

7-404.8 *Term of Performance or Delivery Date*. Insert a clause in accordance with 1-305.5. Clauses in 7-104.92 shall be used as a guide.

7-404.9 *Warranty of Technical Data*. In accordance with 1-324.6, insert the clause in 7-104.9(o).

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 5—Personal Services Contracts

7-500 Scope of Part. This Part sets forth uniform contract clauses for use in personal services contracts referred to in 7-502.

7-501 Reserved.

7-502 Applicability. As used throughout this Part, the term "personal services contract" applies only to a contract entered into with an individual, other than an alien scientist, for personal services to be performed by that individual under Government supervision and paid for on a time basis. It does not apply to contracts with firms or organizations.

7-503 Required Clauses. The following clauses shall be inserted in all personal services contracts, except as indicated:

7-503.1 *Definitions.* Insert the contract clause in 7-103.1, omitting subparagraph (c).

7-503.2 *Payments.*

PAYMENTS (1958 JAN)

Payment for the services performed by the Contractor, as set forth in the Schedule of this contract, shall be made at the rates prescribed, upon the submission by the Contractor of proper invoices or time statements to the office or officer designated herein and at the time provided for herein. In addition to the foregoing the Contractor shall be paid (i) a per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from his home or regular place of employment in accordance with Standardized Government Travel Regulations as authorized in appropriate Travel Orders; and (ii) such other transportation expenses as may be provided for in the Schedule.

(End of clause)

7-503.3 *Assignment of Claims.*

ASSIGNMENT OF CLAIMS (1953 JAN)

No claim arising under this contract shall be transferred or assigned by the Contractor.

(End of clause)

7-503.4 *Disputes.* In accordance with 7-103.12, insert the clause therein.

7-503.5 *Officials Not To Benefit.* Insert the contract clause in 7-103.19, omitting the final phrase which begins, "but this provision ***."

7-503.6 *Covenant Against Contingent Fees.* Insert the contract clause in 7-103.20.

7-503.7 *Termination.*

TERMINATION (1953 JAN)

This contract may be terminated by the Government at any time within the period of its duration upon not less than 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon not less than 15 days' written notice to the Contracting Officer, and the consent of the Contracting Officer shall not unreasonably be withheld.

(End of clause)

7-503.8 *Approval of Contract.*

APPROVAL OF CONTRACT (1953 JAN)

This contract shall be subject to the written approval of the Secretary or his duly authorized representative and shall not be binding until so approved.

(End of clause)

7-503.9 *Patents.* In accordance with 9-108, insert the following clause.

PATENT RIGHTS (1975 AUG)

(a) For the purpose of determining the rights of the Government and the Contractor in and to inventions, the Contractor agrees to be bound by all provisions of Executive Order 10096, dated 23 January 1950, and any orders, rules, regulations, or the like issued thereunder.

(b) The Contractor shall: (i) make written disclosure promptly to the Contracting Officer of all inventions of the Contractor which are conceived or first actually reduced to practice during the term of this contract, and sign and execute all papers necessary for conveying to the Government the right to which the Government is entitled in accordance with the determination made under the provisions of Executive Order 10096, or (ii) certify to the Contracting Officer that, to the best of the Contractor's knowledge and belief, no inventions have been conceived or first actually reduced to practice during the term of this contract.

(End of clause)

7-503.10 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-504 Clauses To Be Used When Applicable.

7-504.1 *Military Security Requirements.*

(a) Except as provided in (b) below, insert the Military Security Requirements clause in accordance with 7-104.12.

(b) In any cost reimbursement type contract, insert the Military Security Requirements clause in accordance with 7-204.12.

7-504.2 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein. Specific consideration should be given to the use of the clause in 7-104.9(e) when the duties of the contractor will involve the preparation of works in which the Government may desire to obtain copyright protection.

7-504.3 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-504.4 *Government Property.*

(a) *Fixed Price Contracts.* Insert the appropriate clause or clauses in 7-104.24.

(b) *Cost Reimbursement Contracts.* Insert the clause in 7-203.21.

7-504.5 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-504.6 *United States Products and Services* (*Balance of Payments Program*). In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-504.7 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-504.8 *Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-504.9 *Production Progress Report.* In accordance with 25-202, insert the clause in 7-104.51.

7-504.10 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-504.11 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-504.12 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

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7-504.13 *Availability of Funds*. In accordance with 1-318, insert one of the clauses in 7-104.91.

7-504.14 *Term of Performance or Delivery Date*. When applicable, a clause in accordance with 7-104.92 may be used.

7-504.15 *Preference for United States Flag Air Carriers*. In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-504.16 *Privacy Act*. In accordance with 1-327.1, insert the clause in 7-104.96.

7-504.17 *Preference for Domestic Specialty Metals*. In accordance with 7-104.93, insert the applicable clause therein.

7-504.18 *Exclusionary Policies and Practices of Foreign Governments*. In accordance with 6-1312, insert the clause in 7-104.97.

7-504.19 *Reserved.*

7-504.20 *Limitation on Sales Commissions and Fees for Foreign Governments*. In accordance with 6-1305.6, insert the clause in 7-104.107.

7-505 Additional Clause. The following clause shall be inserted in personal services contracts in accordance with Departmental procedures when it is desired to cover the subject matter thereof in such contracts.

7-505.1 *Alterations in Contract*. In accordance with 7-105.1(a), insert the clause therein.

Part 6—Construction and Architect-Engineer Contracts

7-600 Scope of Part. This Part sets forth uniform contract clauses for use in connection with the procurement of construction (see 18-100) and of architect-engineer services for the production and delivery of designs, plans, drawings and specifications, or for supervision and inspection of construction, or both.

7-601 General. As used throughout this Part, the term "construction contract" means any contract (other than one entered into on Standard Form 19 or DD Form 1155 (*see 16-401.2, 16-402.2, and 18-302*), a letter contract, a notice of award, or a modification not effecting new procurement) which is for construction as defined in 18-101.1.

7-602 Required Clauses for Fixed-Price Construction Contracts. The following clauses shall be inserted in all fixed-price construction contracts, except as otherwise provided in this Part.

7-602.1 *Definitions.*

DEFINITIONS (1964 JUN)

(a) The term "Head of the Agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

(End of clause)

Additional definitions may be included *provided* they are not inconsistent with the foregoing clause or the provisions of this Regulation.

7-602.2 *Specifications and Drawings.*

SPECIFICATIONS AND DRAWINGS (1964 JUN)

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

(End of clause)

7-602.3 *Changes.*

CHANGES (1968 FEB)

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract, including but not limited to changes:

(i) in the specifications (including drawings and designs);
(ii) in the method or manner of performance of the work;
(iii) in the Government-furnished facilities, equipment, materials, services, or site; or
(iv) directing acceleration in the performance of the work.

(b) Any other written order or an oral order (which terms as used in this paragraph (b) shall include direction, instruction, interpretation or determination) from the Contracting Officer, which causes any such change, shall be treated as a change order under this clause, *provided* that the Contractor gives the Contracting Officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order.

(c) Except as herein provided, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly: *Provided, however*, That except for claims based on defective specifications, no claim for any change under (b) above shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as therein required: *And provided further*, That in the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

(e) If the Contractor intends to assert a claim for an equitable adjustment under this clause, he must, within 30 days after receipt of a written change order under (a) above or the furnishing of a written notice under (b) above, submit to the Contracting Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the Government. The statement of claim hereunder may be included in the notice under (b) above.

(f) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

(End of clause)

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-602.4 *Differing Site Conditions.*

DIFFERING SITE CONDITIONS (1968 FEB)

(a) The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

(b) No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in (a) above; *provided*, however, the time prescribed therefor may be extended by the Government.

(c) No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

(End of clause)

In accordance with 10 U.S.C. 2306(f), prior to the pricing of any modification pursuant to the "Differing Site Conditions" clause that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-602.5 *Termination for Default—Damages for Delay—Time Extensions.* In accordance with 8-709, insert the following clause.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS (1969 AUG)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes".

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "subcontractors or suppliers" means subcontractors or suppliers at any tier.

(End of clause)

During a period of national emergency, paragraph (d) of the above clause may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather", after the word "causes" wherever it appears. When Standard Form 23A is used, the words "Disputes clause of this contract" in the above clause need not be substituted for "Clause 6 of these General Provisions".

7-602.6 *Disputes.*

(a) Except as provided in (b) below, insert the following clause:

DISPUTES (1964 JUN)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: *Provided, however*, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

In accordance with Departmental procedures, the foregoing clause may be modified to provide for intermediate appeal in overseas areas. The decision shall, if mailed, be sent by certified mail, return receipt requested.

(b) In procurements to be performed outside the United States, its possessions and Puerto Rico, when it is anticipated that the contractor will be a foreign firm, one of the clauses provided for in 7-103.12(b) will be inserted in accordance with the instructions therein.

(c) The form in which the contracting officer shall notify the contractor of his decision under the Disputes clause is set forth in 1-314.

7-602.7 *Payments to Contractor*. Insert the following clause.

PAYMENTS TO CONTRACTOR (1979 MAR)

(a) The Government will pay the contract price as hereinafter provided.

(b) The Government will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the Contracting Officer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration (1) if such consideration is specifically authorized by the contract and (2) if the Contractor furnishes satisfactory evidence that he has acquired title to such material and that it will be utilized on the work covered by this contract.

(c) In making such progress payments, there shall be retained 10 percent (10%) of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, he may authorize such payment to be made in full without retention of a percentage. Also, whenever the work is substantially complete, the Contracting Officer shall retain an amount he considers adequate for the protection of the Government and, at his discretion, may release to the Contractor all or a portion of any excess amount. Furthermore, on completion and acceptance of each separate building, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

(d) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work, or as waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) The Contractor shall, upon request, be reimbursed for the entire amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after furnishing evidence of full payment to the surety.

(f) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor shall have furnished the Government with a release of all claims against the Government arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)

7-602.8 *Assignment of Claims.*

ASSIGNMENT OF CLAIMS (1976 OCT)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said

Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Energy Research and Development Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

The last two sentences of paragraph (a) of the foregoing clause shall be deleted from contracts entered into with foreign contractors.

7-602.9 *Material and Workmanship.*

MATERIAL AND WORKMANSHIP (1964 JUN)

(a) Unless otherwise specifically provided in this contract, all equipment, material, and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article, or patented process, by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the Contractor may, at his option, use any equipment, material, article, or process which, in the judgment of the Contracting Officer, is equal to that named. The Contractor shall furnish to the Contracting Officer for his approval the name of the manufacturer, the model number, and other identifying data and information respecting the performance, capacity, nature, and rating of the machinery and mechanical and other equipment which the Contractor contemplates incorporating in the work. When required by this contract or when called for by the Contracting Officer, the Contractor shall furnish the Contracting Officer for approval full information concerning the material or articles which he contemplates incorporating in the work. When so directed, samples shall be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

7-602.10 *Contractor Inspection System.*

(a) Except as provided in (b) below, insert the following clause in all contracts in excess of $10,000.

CONTRACTOR INSPECTION SYSTEM (1964 NOV)

The Contractor shall (i) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (ii) maintain and make available to the Government adequate records of such inspections.

(End of clause)

(b) When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), the clause in (a) above shall be included in the contract with the following additional sentence.

> The inspection system shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract. (1967 AUG)

7-602.11 *Inspection and Acceptance.*

INSPECTION AND ACCEPTANCE (1976 OCT)

(a) All work (which term includes but is not restricted to materials, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by the Government at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of the Government and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the work strictly complies with the contract requirements. No inspection or test by the Government shall be construed as constituting or implying acceptance. Inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with the clause of this contract entitled "*Termination for Default — Damages for Delay — Time Extensions.*"

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Government reserves the right to charge to the Contractor any additional cost of inspection or test when material or workmanship is not ready at the time specified by the Contractor for inspection or test or when reinspection or retest is necessitated by prior rejection.

(e) Should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract, or that portion of the work that the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud or as regards the Government's rights under any warranty or guarantee.

(End of clause)

7-602.12 *Superintendence by Contractor.*

SUPERINTENDENCE BY CONTRACTOR (1976 OCT)

The Contractor, at all times during performance and until the work is completed and accepted, shall give his personal superintendence to the work or have on the work a competent superintendent, satisfactory to the Contracting Officer and with authority to act for the Contractor.

(End of clause)

7-602.13 *Permits and Responsibilities.*

PERMITS AND RESPONSIBILITIES (1964 JUN)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

(End of clause)

7-602.14 *Conditions Affecting the Work.*

CONDITIONS AFFECTING THE WORK (1964 JUN)

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

(End of clause)

7-602.15 *Other Contracts.*

OTHER CONTRACTS (1964 JUN)

The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)

7-602.16 *Patent Indemnity.* In accordance with 18-903.3, insert the clause in (a) below, and if appropriate, the clause in (b) below.

(a)

PATENT INDEMNITY (1964 JUN)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

(End of clause)

(b) In accordance with 18-903.3(b), insert the following clause.

ITEMS EXCLUDED FROM PATENT INDEMNITY (APR 1966)

The "Patent Indemnity" clause of this contract shall not apply to the following: (*Specifically identify the items to be excluded.*)

(End of clause)

7-602.17 *Additional Bond Security.*

ADDITIONAL BOND SECURITY (1976 OCT)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contarct.

(End of clause)

7-602.18 *Covenant Against Contingent Fees.* In accordance with 7-103.20, insert the clause therein.

7-602.19 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-602.20 *Buy American.* The following clause shall be included in all contracts for construction except those executed on Standard Form 19 and DD Form 1155.

BUY AMERICAN ACT (1966 OCT)

(a) *Agreement.* In accordance with the Buy American Act (41 U.S.C. 10a-10d), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic construction material listed in the "Nondomestic Construction Materials" clause, if any, of this contract.

(b) *Domestic construction material.* "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) *Domestic component.* A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of clause)

7-602.21 *Convict Labor*. In accordance with 12-203, insert the clause in 7-104.17.

7-602.22 *Equal Opportunity*. In accordance with 12-807.1, insert applicable clause in 7-103.18.

7-602.23 *Labor Standards Provisions*.

(a) In accordance with 18-703, insert the following clauses:

(i) *Davis-Bacon Act*.

DAVIS-BACON ACT (40 U.S.C. 276a to a-7) (1977 DEC)

(a) All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR, Part 3)), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. The term *mechanics and laborers* shall be deemed to include apprentices and trainees not covered by an approved program as provided by the apprentice and trainee clause of the contract.

(b) The Contractor may discharge his obligation under this clause to workers in any classification for which the wage determination decision contains:

(1) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations (29 CFR, Part 3); or

(2) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of, bona fide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed, during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the Contractor pays a cash equivalent or provides an alternative fringe benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where the Contractor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by the Contractor. The Secretary of Labor may require the Contractor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

(d) The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics, including apprentices and trainees, to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(e) In the event it is found by the Contracting Officer that any laborer or mechanic, including all apprentices and trainees, employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, or by the "Apprentices and Trainees" clause of this contract, the Contracting Officer may (i) by written notice to the Government prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (ii) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(f) Paragraphs (a) through (e) of the clause shall apply to this contract to the extent that it is (i) a prime contract with the Government subject to the Davis-Bacon Act or (ii) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(End of clause)

(ii) *Contract Work Hours and Safety Standards Act—Overtime Compensation.*

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (40 U.S.C. 327 - 333) (1977 DEC)

This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) The Contractor shall not require or permit any laborer or mechanic, including apprentices, trainees, watchmen, and guards in any workweek in which he is employed on any work under this contract to work in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic, including apprentices, trainees, watchmen, and guards, receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the Contractor's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including an apprentice, trainee, watchman, or guard, employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight (8) hours or in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by paragraph (a).

(End of clause)

(iii) *Apprentices and Trainees.*

APPRENTICES AND TRAINEES (1977 DEC)

(a) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the Bureau, or if a person is employed in his first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a state apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification employed on this contract shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph (b) of this clause or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall furnish to the Contracting Officer written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

(b) Trainees will be permitted to work at less than the predetermined rate for the work performed when they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen on this contract shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and not participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall furnish the Contracting Officer written evidence of the certification of his program, the registration of the trainee, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws the approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of this contract

(End of clause)

(iv) *Payrolls and Basic Records.*

PAYROLLS AND BASIC RECORDS (1977 DEC)

(a) The Contractor shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of three (3) years thereafter for all laborers and mechanics, including apprentices, trainees, watchmen, and guards, working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. (NOTE. Watchmen and guards are reflected on payroll records for Contract Work Hours and Safety Standards Act purposes only.) Whenever the Contractor has obtained approval from the Secretary of Labor as provided in paragraph (c) of the clause entitled "*Davis-Bacon Act*", he shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic, including apprentices and trainees, conform with the work he performed. Weekly submission of the "Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy the requirement for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of the clause entitled "*Davis-Bacon Act*".

(c) The Contractor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

(End of clause)

(v) *Compliance With Copeland Regulations.*

COMPLIANCE WITH COPELAND REGULATIONS (1964 JUN)

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) which are incorporated herein by reference.

(End of clause)

(vi) *Withholding of Funds.*

WITHHOLDING OF FUNDS (1977 DEC)

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (i) to pay laborers and mechanics, including apprentices, trainees, watchmen, and guards, employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (ii) to satisfy any liability of the Contractor and any subcontractor for liquidated damages under paragraph (b) of the clause entitled "*Contract Work Hours and Safety Standards Act—Overtime Compensation.*"

(b) If the Contractor or any subcontractor fails to pay any laborer, mechanic, apprentice, trainee, watchman, or guard employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

(End of clause)

(vii) *Subcontracts.*

SUBCONTRACTS (1972 FEB)

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment" in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

(End of clause)

(viii) *Contract Termination—Debarment.*

CONTRACT TERMINATION—DEBARMENT (1972 APR)

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

(End of clause)

(ix) *Disputes Concerning Labor Standards.*

DISPUTES CONCERNING LABOR STANDARDS (1977 DEC)

Disputes arising out of the labor standards provisions of this contract shall be subject to the *Disputes* clause except to the extent such disputes involve the meaning of classifications or wage rates contained in the wage determination decision of the Secretary of Labor or the applicability of the labor provisions of this contract which questions shall be referred to the Secretary of Labor in accordance with the procedures of the Department of Labor.

(End of clause)

(b) In the case of construction contracts with a State or political subdivision thereof, in accordance with 18-703.3, preface the clauses required by (a) above with the following provision.

The Contractor agrees to comply with the requirements of the Contract Work Hours Standards Act and to insert the following clauses in all subcontracts hereunder with private persons or firms.

7-602.24 *Nondomestic Construction Material.* When a determination has been made that certain construction materials may be used without regard to country of origin, the following clause shall be included in the contract, and the excepted items shall be listed therein.

NONDOMESTIC CONSTRUCTION MATERIALS (1966 OCT)

The requirements of the clause of this contract entitled "Buy American Act" do not apply to the items set forth below:
(Insert list here)

(End of clause)

When the above clause is used, the contracting officer shall place in the contract file a copy of the signed approval; and a copy thereof shall be available for public inspection.

7-602.25 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-602.26 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-602.27 *Federal, State, Local and Foreign Taxes.* In accordance with Section XI, Part 4, insert the appropriate clause set forth in 7-103.10; and in accordance with 11-302, the following clause.

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (1977 JAN)

(a) As used throughout this clause, the term "materials" means building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price type contract as defined in the Armed Services Procurement Regulation, the contract price includes North Carolina State and local sales and use taxes to be paid with respect to materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement type contract as defined in such regulation, any North Carolina State and local sales and use taxes paid by the Contractor with respect to materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) below:

(i) The Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid thereon. In the event the Contractor makes several purchases from the same vendor, such certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the North Carolina State and local sales and use taxes paid thereon. Such statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid thereon by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish such additional information as the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes.

(ii) The Contractor shall obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) above shall be submitted within sixty (60) days after completion. If this contract is not completed before the next October 1, such certified statements shall be submitted on or before the 30th day of November of each year and shall cover taxes paid during the twelve month period which ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) above shall be in the following form:

I hereby certify that during the period .... to ...., (name of contractor or subcontractor) paid North Carolina State and local sales and use taxes aggregating $............. (State) and $............. (local) with respect to building materials, supplies, fixtures and equipment which have become a part of or annexed to a building or structure erected, altered or repaired by (name of contractor) for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid thereon, shown separately, and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid thereon are as set forth in the attachments hereto.

(End of clause)

Note: In ship repair contracts, change paragraph (a) to read as follows:

(a) As used throughout this clause, the term "materials" means materials, supplies, fixtures and equipment which become a part of or are annexed to any vessel altered or repaired under this contract.

7-602.28 *Renegotiation.* In accordance with 7-103.13, insert the clause therein.

7-602.29 *Termination for Convenience of the Government.*

(a) *Contracts Over $10,000.* In accordance with 8-701(a), insert the following clause.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT—CONSTRUCTION (1974 APR)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; *provided*, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) with respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) the cost of such work;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) a sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; *provided*, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) the reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(ix); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), (e), and (i) hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c), (e), or (i) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) or (i) hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c), (e) or (i) hereof, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, the Contractor may file with the Contracting Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause must be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Contracting Officer.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government, *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(End of clause)

(b) *Contracts Not Exceeding $10,000.* In accordance with 8-705.2, insert the following clause. |

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1965 JAN)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of the Government. If this contract is so terminated, the rights, duties and obligations of the parties hereto shall be in accordance with the applicable Sections of the Armed Services Procurement Regulation in effect on the date of this contract.

(End of clause)

7-602.30 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-602.31 *Authorization and Consent.* In accordance with 9-102.1 and 18-902, insert the appropriate clause in 7-103.22 or 7-302.21.

7-602.32 *Composition of Contractor.*

COMPOSITION OF CONTRACTOR (1965 JAN)

If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

7-602.33 *Site Investigation.*

SITE INVESTIGATION (1965 JAN)

The Contractor acknowledges that he has investigated and satisfied himself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that he has satisfied himself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint himself with the available information will not relieve him from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the Government.

(End of clause)

7–602.34 *Protection of Existing Vegetation, Structures, Utilities, and Improvements.*

PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS (1965 JAN)

(a) The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

(b) The Contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor.

(End of clause)

7–602.35 *Operations and Storage Areas.*

OPERATIONS AND STORAGE AREAS (1965 JAN)

(a) All operations of the Contractor (including storage of materials) upon Government premises shall be confined to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by his operations.

(b) Temporary buildings (storage sheds, shops, offices, etc.) may be erected by the Contractor only with the approval of the Contracting Officer, and shall be built with labor and materials furnished by the Contractor without expense to the Government. Such temporary buildings and utilities shall remain the property of the Contractor and shall be removed by him at his expense upon the completion of the work. With the written consent of the Contracting Officer, such buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways or construct and use such temporary roadways as may be authorized by the Contracting Officer. Where materials are transported in the prosecution of the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbings or sidewalks, protection against damage shall be provided by the Contractor and any damaged roads, curbings, or sidewalks shall be repaired by, or at the expense of the Contractor.

(End of clause)

7–602.36 *Modification Proposals-Price Breakdown.* The requirements of this clause are in addition to and do not limit the requirements of 3–807.3 and 16–206 for the submission of cost or pricing data on DD Form 633.

MODIFICATION PROPOSALS-PRICE BREAKDOWN (1968 APR)

The Contractor, in connection with any proposal he makes for a contract modification, shall furnish a price breakdown, itemized as required by the Contracting Officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract, and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefor shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the Contracting Officer.

(End of clause)

7-602.37 *Subcontractors.*

(a) In construction contracts for work within the United States, insert the following clause:

SUBCONTRACTORS (1979 MAR)

Within seven days after the award of any subcontract either by himself or a subcontractor, the Contractor shall deliver to the Contracting Officer a completed DD Form 1566. The form shall include the subcontractor's acknowledgement of the inclusion in his subcontract of the clauses of this contract entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act - Overtime Compensation," Apprentices and Trainees," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," "Contract Termination - Debarment," and "Payrolls and Basic Records." Nothing contained in this contract shall create any contractual relation between the subcontractor and the Government.

(End of clause)

(b) In construction contracts to be performed in U. S. possessions (as defined in 18-703.2), and in Puerto Rico, insert the clause in (a) above, modifying the second sentence by referring only to the clauses required by 18-703.2

(c) In construction contracts to be performed outside the United States, its possessions and Puerto Rico, insert the clause in (a) above, modified by deleting the second sentence thereof.

7-602.38 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-602.39 *Use and Possession Prior to Completion.*

USE AND POSSESSION PRIOR TO COMPLETION (1976 OCT)

The Government shall have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the Contracting Officer shall furnish the Contractor an itemized list of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by the Government, *provided* that failure to list any item of work shall not relieve the Contractor of responsibility for compliance with the terms of the contract. Such possession or use shall not be deemed an acceptance of any work under the contract. While the Government has such possession or use, the Contractor, notwithstanding the provisions of the clause of this contract entitled "*Permits and Responsibilities,*" shall be relieved of the responsibility for the loss or damage to the work resulting from the Government's possession or use. If such prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly.

(End of clause)

7-602.40 *Cleaning Up.*

CLEANING UP (1965 JAN)

The Contractor shall at all times keep the construction area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove any rubbish from the premises and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the construction the Contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer.

(End of clause)

7-602.41 *Additional Definitions.*

ADDITIONAL DEFINITIONS (1965 JAN)

(a) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory" or words of like import shall mean "approved by" or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(b) Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provided complete in place", that is "furnished and installed".

(End of clause)

7-602.42 *Accident Prevention.*

(a) Normally the following clause concerning safety controls, records, reports and corrective action to be taken shall be inserted.

ACCIDENT PREVENTION (1977 JUN)

(a) In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies, and equipment; and for avoidance of work interruptions in the performance of this contract, the Contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1, dated 1 June 1977, entitled "General Safety Requirements", as amended, and will also take or cause to be taken such additional measures as the Contracting Officer may determine to be reasonably necessary for the purpose.

(b) The Contractor will maintain an accurate record of, and will report to the Contracting Officer in the manner and on the forms prescribed by the Contracting Officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

(c) The Contracting Officer will notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the Contractor or his representative at the site of the work, shall be deemed sufficient for the purpose. If the Contractor fails or refuses to comply promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

(d) Compliance with the provisions of this clause by subcontractors will be the responsibility of the Contractor.

(End of clause)

(b) In contracts involving work of long duration or of hazardous character, the following paragraph (e) will be added to the above clause:

(e) Prior to commencement of the work the Contractor will:

(1) submit in writing his proposals for effectuating this provision for accident prevention;

(2) meet in conference with representatives of the Contracting Officer to discuss and develop mutual understandings relative to administration of the over-all safety program.

7-602.43 *Government Inspectors.*

GOVERNMENT INSPECTORS (1965 JAN)

The work will be conducted under the general direction of the Contracting Officer and is subject to inspection by his appointed inspectors to insure strict compliance with the terms of the contract. No inspector is authorized to change any provision of the specifications without written authorization of the Contracting Officer, nor shall the presence or absence of an inspector relieve the Contractor from any requirements of the contract.

(End of clause)

7-602.44 *Commencement, Prosecution and Completion of Work.*

(a) In accordance with 18-105, insert the following clause (except this clause may be appropriately modified to accommodate the issuance of orders under Indefinite Delivery Type contracts).

COMMENCEMENT, PROSECUTION AND COMPLETION OF WORK (1965 JAN)

The Contractor will be required to commence work under this contract within .... calendar days after the date of receipt by him of notice to proceed, to prosecute said work diligently, and to complete the entire work ready for use not later than .... The time stated for completion shall include final clean-up of the premises.

(End of clause)

(b) When the completion date is expressed, not in a specified number of days after receipt of notice to proceed, but rather as a calendar day, which date is computed on the basis of the contractor receiving the notice to proceed by a certain day, add the following to the above clause:

The foregoing completion date is based on the assumption that the successful bidder will receive the notice to proceed by .... The Government will extend the completion date by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the bid. (1968 APR)

7-602.45 *Contract Drawings, Maps and Specifications.*

CONTRACT DRAWINGS, MAPS AND SPECIFICATIONS (1965 JAN)

(a) .... sets (five unless otherwise specified herein) of large scale contract drawings, maps and specifications will be furnished the Contractor without charge except applicable publications incorporated into the technical provisions by reference. Additional sets will be furnished on request at the cost of reproduction. The work shall conform to the following contract drawings and maps, all of which form a part of these specifications and are available in the office of

....

....

(address)

Title File and Drawing No.

(b) Omissions from the drawings or specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or misdescribed details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

(c) The Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify the Contracting Officer of any discrepancies. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall in general govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors which might have been avoided thereby.

(End of clause)

7–602.46 *Suspension of Work.*

SUSPENSION OF WORK (1968 FEB)

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

7–602.47 *Rights in Shop Drawings.* In accordance with 18–910.1(b), insert the following clause.

RIGHTS IN SHOP DRAWINGS (1966 APR)

(a) Shop drawings for construction means drawings, submitted to the Government by the Construction Contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail (i) the proposed fabrication and assembly of structural elements and (ii) the installation (*i.e.*, form, fit, and attachment details) of materials or equipment. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(b) This clause, including this paragraph (b), shall be included in all subcontracts hereunder at any tier.

(End of clause)

7-602.48 *Reserved.*

7-602.49 ***Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.*** **Insert the clause in 7-103.27.**

7-602.50 *Value Engineering Incentive--Construction.* In accordance with 1-1704.6, insert the following clause in all construction contracts of $100,000 or more except incentive contracts:

VALUE ENGINEERING INCENTIVE--CONSTRUCTION (1980 DEC)

(a) *Applicability.* This clause applies to any Contractor developed, prepared, and submitted Value Engineering Change Proposal (VECP).

(b) *Definitions.*

(1) "Contractor's development and implementation costs" means those costs incurred on a VECP before Government acceptance and those costs the Contractor incurs specifically to make the changes required by Government acceptance of a VECP.

(2) "Government costs" means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistic support. They do not include the normal administrative costs of processing the VECP.

(3) "Instant contract savings" means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs (including subcontractors' development and implementation costs). (See paragraph (g).)

(4) "Value Engineering Change Proposal (VECP)" means a proposal that:

(i) requires a change to this, the instant contract, to implement; and

(ii) results in reducing the contract price or estimated cost without impairing essential functions or characteristics, *provided* that it does not involve a change in deliverable end-item quantities only.

(c) *VECP Preparation.* As a minimum, the Contractor shall include the information described in (1) through (6) in each VECP. If the proposed change affects contractually required configuration management procedures, the instructions in the procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for both the affected portions of the existing contract requirement and the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (g). The Contractor shall also include a description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(4) A projection of any effects the proposed change would have on collateral costs to the agency.

(5) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(6) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submissions.*

(1) The Contractor shall submit VECPs to the Resident Engineer at the worksite, with a copy to the Contracting Officer. The Contracting Officer shall notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required because of extenuating circumstances, the Contractor shall be notified within the 45-day period and provided the reason for the delay and the expected date of the Contracting Officer's decision. VECPs shall be processed expeditiously; however, the Government shall not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer shall provide the Contractor written notification fully explaining the reasons for rejection. The Contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(e) *Acceptance*. Any VECP may be accepted in whole or in part by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The Contracting Officer's decision to accept all or part of any VECP shall be final and not subject to the Disputes clause.

(f) *Sharing*.

(1) Rates. The Contractor's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by 55 percent for fixed-price contracts and 25 percent for cost-reimbursement contracts.

(2) Payment. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to:

(i) accept the VECP;

(ii) reduce the contract price or estimated cost by the amount of instant contract savings; and

(iii) provide the Contractor's share of savings by adding the amount calculated in (f)(1) to the contract price or fee.

(g) *Subcontracts*. The Contractor shall include appropriate VE clauses in any subcontract of $50,000 or more and may include them in subcontracts of lesser value. To compute any adjustment in the contract price under paragraph (f), the Contractor's VECP development and implementation costs shall include any subcontractor's development and implementation costs that clearly result from the VECP, but shall exclude any VE incentive payments to subcontractors. The Contractor may choose any arrangement for subcontractor VE incentive payments, *provided* that these payments are not made from the Government's share of the savings resulting from the VECP.

(h) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

> "These data, furnished under the Value Engineering Incentive--Construction clause of Contract __________, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a VECP submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations."

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data.

(End of clause)

7-602.51 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-602.52 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-602.53 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-602.54 *Shop Drawings.*

(a) Insert the following clause, with the appropriate additions in (b) and (c) below.

SHOP DRAWINGS (1976 OCT)

(a) The term "*shop drawings*" includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract.

(b) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be

> returned for resubmission. The Contracting Officer will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate his reasons therefor. Any work done prior to such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (c) below.
>
> (c) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation(s), he shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.
>
> (d) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated herein) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated herein) of all shop drawings will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

(b) "*As built*" shop drawings may be required for the permanent record of the using agency.

(1) When reproducible shop drawings are required, the following provision shall be added to the clause in (a) above:

> Upon the completion of the work under this contract, the Contractor shall furnish a complete set of reproducibles of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

(2) If reproducible shop drawings are not required, the following provision shall be added to the clause in (a) above:

> Upon the completion of the work under this contract, the Contractor shall furnish .... complete sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

7-603 Clauses for Fixed-Price Construction Contracts To Be Used When Applicable.

7-603.1 *Notice to Government of Labor Disputes*. In accordance with 7-104.4, insert the clause therein.

7-603.2 *Communist Areas*. In accordance with 6-403, insert the clause in 7-103.15.

7-603.3 *Filing of Patent Applications*. In accordance with 9-106, insert the clause in 7-104.6.

7-603.4 *Reporting and Refunding of Royalties*. In accordance with 9-110(d), 9-111, and 18-909, insert the appropriate clause or clauses in 7-104.8.

7-603.5 *Contract Prices—Bidding Schedule*. Insert the following clause in contracts containing only unit prices for specified items.

CONTRACT PRICES-BIDDING SCHEDULE (1968 APR)

Payment for the various items listed in the Bidding Schedule shall constitute full compensation for furnishing all plant, labor, equipment, appliances, and materials, and for performing all operations required to complete the work in conformity with the drawings and specifications. All costs for work not specifically mentioned in the Bidding Schedule shall be included in the contract prices for the items listed.

(End of clause)

7-603.6 *Military Security Requirements*. In accordance with 7-104.12, insert the clause therein.

7-603.7 *Examination of Records by Comptroller General*. In accordance with 7-104.15, insert the clause therein.

7-603.8 *Priorities, Allocations, and Allotments*. In accordance with 7-104.18, insert the clause therein.

7-603.9 *Subcontracts*. In accordance with 23-201.1, insert the clause, modified as appropriate, in 7-104.23.

7-603.10 *Required Insurance*. In accordance with 10-405, insert the following clause.

REQUIRED INSURANCE (1977 JAN)

(a) The Contractor shall procure and maintain during the entire period of his performance under this contract the following minimum insurance.

Type ....
Amount ....

(b) Prior to the commencement of work hereunder, the Contractor shall furnish to the Contracting Officer a certificate or written statement of the above-required insurance. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of the Government in such insurance shall not be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof to the Contracting Officer.

(c) The Contractor agrees to insert the substance of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

7-603.11 *Price Reduction for Defective Cost or Pricing Data*. In accordance with 7-104.29, insert the clause therein.

7-603.12 *Workmen's Compensation and War Hazard Insurance Overseas*. In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-603.13 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation*. In accordance with 7-104.81, insert the clause therein.

7-603.14 *Advance Payments*. In accordance with Appendix E, Part 4, insert the clause in 7-104.34.

7-603.15 *Performance of Work by Contractor.* In accordance with 18-104, insert the following clause.

PERFORMANCE OF WORK BY CONTRACTOR (1965 JAN)

The Contractor shall perform on the site, and with his own organization, work equivalent to at least (words) percent * (figures) of the total amount of work to be performed under the contract. If, during the progress of the work hereunder, the Contractor requests a reduction in such percentage and the Contracting Officer determines that it would be to the Government's advantage, the percentage of the work required to be performed by the Contractor may be reduced; *provided*, written approval of such reduction is obtained by the Contractor from the Contracting Officer.

(End of clause)

*NOTE: The required percentage shall be the maximum consistent with customary or necessary specialty subcontracting, complexity, and magnitude of the work, and shall not be less than twenty percent (20%), except for housing contracts in which it shall not be less than fifteen percent (15%).

7-603.16 *Patent Rights.* In accordance with 9-107 and 18-908, insert the appropriate clause in 7-302.23.

7-603.17 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-603.18 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-603.19 *Duty-Free Entry.* In accordance with 6-603, insert the clause in 7-104.31.

7-603.20 *Audit by Department of Defense.* In accordance with 7-104.41, insert the clause therein.

7-603.21 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the clause therein.

7-603.22 *Government-Furnished Property Clause for Fixed-Price Contracts.* Insert the appropriate clause or clauses in 7-104.24.

7-603.23 *Fixed Price Incentive Contract Clause.* The following clause shall be inserted in all negotiated contracts providing for a fixed price with provision for an adjustment reflecting the efficiency and economy exercised by the contractor during performance of the contract.

INCENTIVE PRICE REVISION (1978 SEP)

(a) *General.* The total contract price set forth in this contract as it may have been modified, consists of unit prices, lump sum prices or a combination thereof, and such total contract price is a total target price which includes a total target profit of ....% of total target costs. The total target price shall be revised in accordance with the provisions of this clause; *provided*, that the total amount paid under this contract shall not exceed (i) the aggregate of the prices of the lump sum items, plus (ii) the unit prices of the estimated quantity items times the actual quantity of such items, plus (iii) ....% of the sum of (i) and (ii) above.

(b) *Definition of Cost.* For the purposes of this clause, "cost" or "costs" means allowable cost in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(c) *Submission of Data.* Within .... days after completion of all work and services to be performed under this contract, the Contractor shall submit (i) a detailed statement of costs incurred in the performance of this contract; (ii) such other information as the Contracting Officer may require; and (iii) a price list of all materials, supplies and property, the cost of which is included in (i) above, which are on hand upon completion of the work. Where the Contractor fails to submit the required data within the time specified, no further payment may be made by the Contracting Officer until the data are furnished and if it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the data submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in ASPR 7-104.39. Interest shall be computed for the period from the date the data was due to the date of repayment.

(d) *Price Revision*. Upon submission of the data required by paragraph (c) above, the Contractor and the Contracting Officer shall promptly establish the total adjusted price in accordance with the following:

(1) On the basis of the information required by paragraph (c) above, the Contractor and the Contracting Officer shall establish by negotiation the total adjusted cost incurred or to be incurred for the work and services performed under this contract and accepted by the Government.

(2) The total adjusted price of the work and services performed under this contract shall be established by adding to the total adjusted cost, as negotiated under (1) above, less the proceeds of any disposition of Contractor inventory in accordance with (h) below, an allowance for profit determined in accordance with (3) below, *provided*, however, that in no event shall the total adjusted price exceed the amount computed in accordance with paragraph (a) above.

(3) The allowance for profit with respect to this contract shall be determined as follows, subject to the provisions and limitations set forth in subparagraph (2) above:

WHEN THE TOTAL ADJUSTED COST IS: Equal to the total target cost,
THE ALLOWANCE FOR PROFIT IS: Total target profit.

WHEN THE TOTAL ADJUSTED COST IS: Greater than the total target cost, *THE ALLOWANCE FOR PROFIT IS:* Total target profit less .... percent (—%) of the amount by which the total adjusted cost exceeds the total target cost.

WHEN THE TOTAL ADJUSTED COST IS: Less than the total target cost, *THE ALLOWANCE FOR PROFIT IS:* Total target profit plus......... percent (—%) of the amount by which the total adjusted cost is less than the total target cost.

(e) *Records*. (1) The Contractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred for the performance of this contract. However, no material change will be required to be made in the Contractor's accounting procedures and practices if they conform to generally accepted accounting practices and if the cost data required to be furnished under (c) above are readily ascertainable. Each subcontract placed by the Contractor hereunder on other than a firm fixed-price basis (i) shall provide that the subcontractor shall maintain books, records, documents, and other evidence, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of such subcontract and (ii) shall require each such subcontractor to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts which are on other than a firm fixed-price basis.

(2) The Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the Contractor's books, records, documents, and other evidence pertinent to the performance of this contract.

(f) *Certification*. An authorized responsible official of the Contractor shall certify on each statement of costs submitted to the Contracting Officer pursuant to (c) above that the incurred costs are based upon the records of the Contractor, that such records reflect generally accepted accounting principles and practices normally followed by the Contractor, and that such costs are correct to the best of his knowledge and belief.

(g) *Subcontracts*. (1) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis; and the Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which is on a cost-plus-a-fee basis and which would involve a total price in excess of $10,000, including the fee. The Contracting Officer may, in his discretion, ratify in writing any such cost-plus-a-fee subcontract and such action shall constitute the consent of the Contracting Officer as required by this subparagraph (1).

(2) Each subcontract placed by the Contractor hereunder (i) shall provide that the Government may at all reasonable times make such examination or audit as the Contracting Officer may require of the subcontractor's books, records, documents, and other evidence, pertinent to the performance of the subcontract and (ii) shall require each such subcontractor whose subcontract is on other than a firm fixed-price basis to insert the entire substance of this subparagraph, including this (ii), in all his subcontracts. The term "subcontract," as used in this subparagraph (2) only, excludes firm fixed-price subcontracts not in excess of $2,500 and subcontracts for utility services at rates established for uniform application to the general public.

(h) *Contractor Inventory*. Any materials, supplies and property the cost of which is allocable to the contract and included in the total adjusted cost which are on hand upon the completion of the contract, shall be disposed of in accordance with the applicable Government regulations covering the disposition of Contractor inventory and any proceeds of such disposition shall be used to reduce the total adjusted cost established pursuant to paragraph (d) above. Any materials, supplies and property which are on hand upon the completion of the contract, which are not allocable to the contract and as to which no costs have been included in the total adjusted cost, shall be and remain the property of the Contractor.

(i) *Contract Modification*. The total adjusted price, as determined in accordance with paragraph (d) above, shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer. Such final contract price shall apply to all work and services performed under this contract.

(j) *Adjustment of Payment Estimates*. If at any time it appears that the final contract price will be substantially greater or less than (i) the aggregate of the prices of the lump sum items, plus (ii) the unit prices of the estimated quantity items times the actual quantity of such items completed, the Contracting Officer may adjust each payment estimate thereafter to be made under the contract by increasing or decreasing the net amount of such payment estimate by the indicated percentage of variation, *provided*, however, that in no event shall the percentage of increase exceed that indicated in paragraph (a)(iii) above. Any adjustment of payment estimates under this paragraph shall in no way limit or affect the price revision to be computed in accordance with the provisions of this clause.

(k) *Quarterly Limitation on Payments Statement*. Notwithstanding any provisions of this contract authorizing greater payment, the total of all amounts paid or payable under this contract, until price revision has been made to the full extent permitted by this contract, shall not exceed the sum of the following items as reported by the Contractor from time to time as hereinafter provided: (i) the total amount of costs and (ii) the total amount of target profit used in establishing the total target price and allocable by direct proportion to the work or services performed. Within forty-five (45) days after the end of each quarter of the Contractor's fiscal year, beginning for the quarter in which work or services are first performed under this contract and as of the end of each quarter thereafter, the Contractor shall submit to the Contract Administration Office with a copy to the purchasing activity and the cognizant contract auditor, a statement setting forth the respective amounts of each of the two numbered items next above, together with the total of all amounts paid or payable under this contract as of the end of each such quarter. If on any quarterly statement the total of the amounts paid exceeds the sum of the two numbered items above, this gross excess shall be paid immediately by the Contractor to the Government or credited against existing unpaid billings. When the Contractor fails to submit the quarterly statement within forty-five (45) days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the excess shall be repaid to the Government immediately. Unless repaid within thirty (30) days after the end of the statement submittal period, the amount of such excess shall bear interest at the rate established in accordance with the Interest clause in ASPR 7-104.39. Interest shall be computed for the period from the date the quarterly statement was due to the date of repayment.

(l) *Disagreement*. If the Contractor and the Contracting Officer are unable to agree upon the final contract price within sixty (60) days after the date on which the data required by (c) above are to be submitted or within such further time as specified by the Contracting Officer, the Contracting Officer shall resolve the disagreement by issuing a decision pursuant to the clause of this contract entitled "Disputes."

(m) *Termination.*

(i) In the event of a complete termination, the amount payable to the Contractor shall be established in accordance with the clause of this contract entitled "Termination for Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extensions," as applicable.

(ii) In the event of a partial termination, the amount payable to the Contractor as to the work and services terminated shall be established in accordance with the clause of this contract entitled "Termination for the Convenience of the Government" or "Termination for Default—Damages for Delay—Time Extensions," as applicable. As to the work and services not terminated the provisions of this clause shall apply.

(End of clause)

7-603.24 *Special Tooling.* In accordance with 13-305.2(d)(3), insert the clause in 7-104.25 in negotiated construction contracts.

7-603.25 *Physical Data.*

(a) All the information concerning local conditions pertaining to the performance of the contract work, which has been made available to the contractor should be referenced into the contract by completing the clause set forth in (b) below. Wherever test borings, analyses, or hydrographic data are to be made available to the contractor, the wording of this special clause should be such as only to inform the contractor as to the source of the data and where it may be examined.

(b) *Contract Clause.*

PHYSICAL DATA (1965 JAN)

Information and data furnished or referred to below are furnished for the Contractor's information. However, it is expressly understood that the Government will not be responsible for any interpretation or conclusion drawn therefrom by the Contractor.

(a) The physical conditions indicated on the drawings and in the specifications are the result of site investigations by (insert investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels, etc.)

(b) Weather Conditions. (Insert summary of weather records and warnings.)

(c) Transportation facilities. (Insert the summary of transportation facilities accessible to project, availability, and limitations.)

(d) .... (Insert other pertinent information.)

(End of clause)

7-603.26 *Reserved.*

7-603.27 *Variations in Estimated Quantities.* Insert the following clause in contracts containing estimated quantity items (not required for indefinite delivery type contracts).

VARIATIONS IN ESTIMATED QUANTITIES (1968 APR)

Where the quantity of a pay item in this contract is an estimated quantity and where the actual quantity of such pay item varies more than fifteen percent (15%) above or below the estimated quantity stated in this contract, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above one hundred fifteen percent (115%) or below eighty-five percent (85%) of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contracting Officer shall, upon receipt of a written request for an extension of time within ten (10) days from the beginning of such delay, or within such further period of time which may be granted by the Contracting Officer prior to the date of final settlement of the contract, ascertain the facts and make such adjustment for extending the completion date as in his judgment the findings justify.

(End of clause)

7-603.28 *Identification of Government Furnished Property.* Insert the following clause when required. The point at which the Government-furnished property will be delivered to the contractor should be specifically stated as a part of the information furnished under the special clause on physical data (see 7-603.25). Special provisions may be required in addition to the clause herein to cover Government or another contractor's installation, preparation for operation, or testing of equipment.

IDENTIFICATION OF GOVERNMENT FURNISHED PROPERTY (1968 SEP)

The Government will furnish to the Contractor the following property to be incorporated or installed in the work or used in its performance. Such property will be furnished f.o.b. railroad cars at the place specified in paragraph ...., or f.o.b. truck at the project site and the Contractor will be required to accept delivery when made, paying any demurrage or detention charges incurred, and unloading and transporting the property to the job site at his own expense. All such property will be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated herein. The Contractor shall verify the quantity and condition of such Government-furnished property when delivered to him, acknowledge receipt thereof in writing to the Contracting Officer, and in case of damage to or shortage of such property, he shall within 24 hours report in writing such damage or shortage to the Contracting Officer.

Quantity ....
Item ....
Description ....

(End of clause)

7–603.29 *Salvage Materials and Equipment.* Insert the following clause in contracts which involve Government-furnished property which is to be salvaged and reused:

SALVAGE MATERIALS AND EQUIPMENT (1965 JAN)

The Contractor shall maintain adequate property control records for all materials or equipment specified to be salvaged. These records may be in accordance with the Contractor's system of property control, if approved by the property administrator. The Contractor shall be responsible for the adequate storage and protection of all salvaged materials and equipment and shall replace, at no cost to the Government, all salvage materials and equipment which are broken or damaged during salvage operations as the result of his negligence, or while in his care.

(End of clause)

7–603.30 *Availability and Use of Utility Services.* Insert the following clause in contracts for performance at Government installations when it is determined that one or more utility systems and supplies are adequate for the needs and use of both the Government and the contractor and it is advantageous to the Government to furnish such utility services.

AVAILABILITY AND USE OF UTILITY SERVICES (1967 APR)

(a) The Government will make available to the Contractor, from existing outlets and supplies, all reasonably required amounts of utilities as specified in the Schedule or specifications. Except as otherwise provided in the Schedule or specifications, each utility shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates as determined by the Contracting Officer.

(b) The Contractor shall carefully conserve utilities furnished without charge. The Contractor, at his own expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines and, if necessary to determine charges, all meters required to measure the amount of each utility used; and he shall remove the same prior to final acceptance of the construction.

(End of clause)

7–603.31 *Management Systems Requirements.* In accordance with 16–827.1, insert the clause in 7–104.50.

7–603.32 *Misplaced Material.* Insert the following clause in all contracts involving work near or on navigable waterways.

MISPLACED MATERIAL (1965 JAN)

Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink, or misplace any material, plant, machinery, or appliance, which in the opinion of the Contracting Officer may be dangerous to or obstruct navigation, the Contractor shall recover and remove the same with the utmost dispatch. The Contractor shall give immediate notice, with description and location of such obstructions, to the Contracting Officer or inspector, and when required shall mark or buoy such obstructions until the same are removed. Should he refuse, neglect, or delay compliance with the above requirements, such obstructions may be removed by the Contracting Officer, and the cost of such removal may be deducted from any money due or to become due the Contractor, or may be recovered under his bond. The liability of the Contractor for the removal of a vessel wrecked or sunk without fault or negligence shall be limited to that provided in Sections 15, 19, and 20 of the River and Harbor Act of March 3, 1899. (33 U.S.C. 410 et seq.)

(End of clause)

7-603.33 *Signal Lights*. Insert the following clause in all contracts requiring the use of marine equipment.

SIGNAL LIGHTS (1965 JAN)

The Contractor shall display signal lights and conduct his operations in accordance with the General Regulations of the Department of the Army and of the Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as approved by the Secretary of the Army (33 C.F.R. 201.1-201.16) and the Commandant, U.S. Coast Guard (33 C.F.R. 80.18-80.31a and 33 C.F.R. 95.51-95.70).

(End of clause)

7-603.34 *Identification of Employees*. A clause substantially as follows shall be inserted in all construction contracts where identification is required for security or other reasons:

IDENTIFICATION OF EMPLOYEES (1965 JAN)

The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

(End of clause)

7-603.35 *Superintendence of Subcontractors*. Insert the following clause in contracts for work of a highly technical and complicated nature requiring extraordinary control by the contractor of the several parts of the work, or in contracts covering work spread over several places on the site of work.

SUPERINTENDENCE OF SUBCONTRACTORS (1965 JAN)

(a) The Contractor shall be required to furnish the following, in addition to the superintendence required by the General Provision entitled "SUPERINTENDENCE BY CONTRACTOR":

(i) If more than 50% and less than 70% of the value of the contract work is subcontracted, one superintendent shall be provided at the site and on the Contractor's payroll to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(ii) If 70% or more of the value of the work is subcontracted, the Contractor shall be required to furnish two such superintendents to be responsible for coordinating, directing, inspecting and expediting the subcontract work.

(b) If the Contracting Officer, at any time after 50% of the subcontracted work has been completed, finds that satisfactory progress is being made, he may waive all or part of the above requirement for additional superintendence subject to the right of the Contracting Officer to reinstate such requirement if at any time during the progress of the remaining work he finds that satisfactory progress is not being made.

(End of clause)

7-603.36 *Time Extensions for Delays to Elements of the Work.* The following clause shall be inserted in contracts in which there are separate completion dates for various items of work and liquidated damages are provided for:

TIME EXTENSIONS (1965 JAN)

Notwithstanding any other provisions of this contract it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages pursuant to the new completion schedule.

(End of clause)

7-603.37 *Payment for Mobilization and Preparatory Work.* Insert one of the appropriate following clauses in contracts containing a separate bid item for mobilization and preparatory work with the approval of the Head of the Procuring Activity.

(a) In major construction contracts requiring major or special items of plant and equipment or large stock piles of material which are considered to be in excess of the type, kind and quantity presumed to be normal equipment of a contractor qualified to undertake the work, insert the following clause.

PAYMENT FOR MOBILIZATION AND PREPARATORY WORK, PAYMENT ITEM NO. .... (1979 MAR)

(a) Payments will be made under this contract on the actual expenditures made by the Contractor for mobilization and preparatory work under payment Item No. .... as follows: The Contractor may submit to the Contracting Officer certified accounts of the actual payments made by him for construction plant exceeding $10,000 in value per unit, as appraised by the Contracting Officer at the site of the work, acquired for the execution of the work; for the transportation of all plant and equipment to the site; for material purchased for the prosecution of the contract, but not to be incorporated in the work; for construction of camps, access roads or railroads, trailer courts, mess halls, dormitories or living quarters, field headquarters facilities and construction yards, and for personal services and hire of plant on work preparatory to commencing actual work on the construction items for which payment is provided under the terms of the contract. Accounts so submitted must be accompanied by certificate of the Contractor, supported by receipted bills or certified copies of payrolls and freight bills, showing that he has acquired said construction plant and material free from all encumbrances and agreement that it will not be removed from the site and that structures and facilities prepared or erected for the prosecution of the contract work will be maintained and not dismantled prior to the completion and acceptance of the entire work without the written permission of the Contracting Officer. If the Contracting Officer finds that said construction plant, material, equipment and the mobilization and preparatory work performed are suitable and necessary to the efficient prosecution of the contract and that the said preparatory work has been done with proper economy and efficiency, payment, less the prescribed retained percentage, will be made therefor to the Contractor. Payment for construction plant, material and structures and facilities prepared or erected for prosecution of the contract work shall not exceed the cost thereof to the Contractor less the estimated value upon the completion of the contract as determined by the Contracting Officer. In no event shall such payment exceed 100% of the cost to the Contractor of any such items which have no appreciable salvage value and 75% of the cost to the Contractor of such items which have an appreciable salvage value. The findings of the Contracting Officer as to the suitability and value of the construction plant, equipment, materials, structures or facilities shall not be subject to appeal.

(b) Payments for mobilization and preparatory work will be made in accordance with (a) above, and such payments will be deducted from the contract price for Item No. .... "Mobilization and Preparatory Work" until the total amount thus charged to this item reduces this item to zero, after which no further payments will be made under this item. If the totel of such payments made does not reduce this item to zero, the balance will be paid to the Contractor in the final payment under the contract. The retained percentage will be paid in accordance with the clause of this contract entitled "Payments to Contractor".

(End of clause)

(b) In contracts involving major mobilization expense of plant, equipment and materials other than such as are covered in (a) above, which is occasioned by the location or nature of the work; such as mobilization at an offshore location or towing a dredge to a remote location, insert one of the following clauses:

(1) When it is expected demobilization will occur at the time of contract completion or shortly thereafter, insert the following clause:

MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. .... (1965 JAN)

(a) All costs connected with the mobilization and demobilization of all of the contractor's dredging plant and equipment will be paid for at the contract lump sum price for this item. .... percent (................%) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining .... percent (..........%) will be included in the final payment for work under this contract.

(b) In the event the Contracting Officer considers that the amount in this item (....................%), which represents mobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization, and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(End of clause)

(2) When there is a likelihood that there will be a substantial time lapse between demobilization and final payment under the contract due to such contractual requirements as clean-up or seeding of a disposal area, insert the following clause:

MOBILIZATION AND DEMOBILIZATION, PAYMENT ITEM NO. .... (1975 OCT)

(a) All costs connected with the mobilization and demobilization of all of the Contractor's dredging plant and equipment will be paid for at the contract lump sum price for this item.

.... percent (..........%) of the lump sum price will be paid to the Contractor upon completion of his mobilization at the work site. The remaining ....percent (..........%) will be paid to the Contractor upon completion of demobilization.

(b) In the event the Contracting Officer considers that the amount in this item (..........%), which represents mobilization and (..........%) which represents demobilization, does not bear a reasonable relation to the cost of the work in this contract, the Contracting Officer may require the Contractor to produce cost data to justify this portion of the bid. Failure to justify such price to the satisfaction of the Contracting Officer will result in payment of actual mobilization costs, as determined by the Contracting Officer at the completion of mobilization, and actual demobilization costs, as determined by the Contracting Officer at the completion of demobilization, and payment of the remainder of this item in the final payment under this contract. The determination of the Contracting Officer is not subject to appeal.

(End of clause)

(3) The percentage of the lump sum price, for mobilization and demobilization in paragraph (a) of the above clauses, attributed to mobilization should generally be 60% and the remaining 40% considered to be the cost of demobilization. These percentages may be varied to reflect the situation contemplated under the particular contract, but in no event should mobilization exceed 80% of the payment item.

7-603.38 *Exclusion of Periods in Computing Completion Schedules.* Insert the following clause in contracts which provide that no work will be required between certain dates:

EXCLUSION OF PERIODS IN COMPUTING COMPLETION SCHEDULES (1965 JAN)

No work will be required during the period between .... and .... inclusive and such period has not been considered in computing the time allowed for completion. The Contractor may, however, perform work during all or any part of this period upon giving prior written notice to the Contracting Officer. If the work performed during such period is less than *(.......... cubic yards) (the average monthly work necessary to complete the contract within the time specified) and the Contracting Officer maintains an inspection force during this period to inspect the work, the Contractor will be charged the percentage of the cost of maintaining such force that his work is less than *(..... cubic yards) (the average monthly work necessary to complete the contract within the time specified).

(End of clause)

(**Delete inapplicable provision.*)

7-603.39 *Amount of Liquidated Damages.* In accordance with 18-113, insert the following clause.

LIQUIDATED DAMAGES (1965 JAN)

In case of failure on the part of the Contractor to complete the work within the time fixed in the contract or any extensions thereof, the Contractor shall pay to the Government as liquidated damages, pursuant to the clause of this contract entitled "Termination for Default—Damages for Delay—Time Extensions", the sum of .... for each day of delay.

(End of clause)

7-603.40 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-603.41 *Employment of Ocean-Going Vessels by Construction Contractors.* In accordance with 1-1409, insert the following clause.

EMPLOYMENT OF OCEAN-GOING VESSELS BY CONSTRUCTION CONTRACTORS (1979 JUNE)

(a) If ocean transportation is required after the date of award of this contract to bring any supplies, materials, or equipment, to the construction site from the United States either for use in performance of or for incorporation in the work called for by this contract, United States-flag vessels shall be employed in such transportation to the extent such vessels are available at fair and reasonable rates for United States-flag vessels. The Contractor shall not make any shipment exceeding ten measurement tons (400 cubic feet) by other than a United States-flag vessel without notifying the Contracting Officer that United States-flag vessels are not available at fair and reasonable rates for such vessels and obtaining his permission to ship in other vessels. If such permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in each subcontract or purchase order hereunder which may involve the ocean transportation of construction supplies, materials, or equipment from the United States.

(c) Promptly after each shipment, the Contractor shall furnish to the U.S. Maritime Administration, Division of National Cargo, 14th and E Streets, N.W., Washington, D.C. 20230, one copy of the applicable ocean shipping document indicating for each shipment made under this contract the name and nationality of the vessel and the measurement tonnage (400 cubic feet) shipped on the vessel.

(End of clause)

7-603.42 *Architectural Designs and Data—Government Rights.*

(a) In accordance with 18-910.1(a), insert one of the following clauses, if appropriate.

(1) *Government Rights (Unlimited).*

GOVERNMENT RIGHTS (UNLIMITED) (1979 MAR)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

(2) *Drawings and Other Data to Become Property of Government.*

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (1979 MAR)

All Designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of all works beyond such period.

(End of clause)

(b) In accordance with 18-910.2 and 18-910.3, insert the appropriate clause or clauses in 7-104.9.

7-603.43 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-603.44 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-603.45 *Bills of Lading Covering Shipments From Contractor's Plant.* In accordance with the requirements of 19-217.1(a), insert the clause in 7-103.25.

7-603.46 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-603.47 *Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-603.48 *Progress Charts and Requirements for Overtime Work.* Insert the following clause in contracts having a performance time of sixty days or more. Use of the clause is optional for contracts with a performance time of less than sixty days.

PROGRESS CHARTS AND REQUIREMENTS FOR OVERTIME WORK (1965 JAN)

(a) The Contractor shall within five days or within such time as determined by the Contracting Officer, after date of commencement of work, prepare and submit to the Contracting Officer for approval a practicable schedule, showing the order in which the Contractor proposes to carry on the work, the date on which he will start the several salient features (including procurement of materials, plant and equipment) and the contemplated dates for completing the same. The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion at any time. The Contractor shall enter on the chart the actual progress at such intervals as directed by the Contracting Officer, and shall immediately deliver to the Contracting Officer three copies thereof. If the Contractor fails to submit a progress schedule within the time herein prescribed, the Contracting Officer may withhold approval of progress payment estimates until such time as the Contractor submits the required progress schedule.

(b) If, in the opinion of the Contracting Officer, the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve his progress and the Contracting Officer may require him to increase the number of shifts, or overtime operations, days of work, or the amount of construction plant, or all of them, and to submit for approval such supplementary schedule or schedules in chart form as may be deemed necessary to demonstrate the manner in which the agreed rate of progress will be regained, all without additional cost to the Government.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this provision shall be grounds for determination by the Contracting Officer that the Contractor is not prosecuting the work with such diligence as will insure completion within the time specified. Upon such determination the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part thereof, in accordance with the clause of the contract entitled "Termination for Default—Damages for Delay—Time Extensions."

(End of clause)

7-603.49 *Airfield Safety Precautions.* Insert the following clause in contracts to be performed on or near airfields when it is desired to cover the subject matter thereof.

AIRFIELD SAFETY PRECAUTIONS (1968 APR)

(a) The operation of all ground equipment (mobile or stationary), the placement of all materials, and the performance of all work, upon and in the vicinity of all airfields, shall be done in accordance with this clause. The requirements of this clause are in addition to any other safety requirements of this contract.

(b) For purposes of this clause the following definitions shall apply.

(1) "*Landing Areas*" means the following:

(i) the primary surfaces which are comprised of the surface of the runways, the runway shoulders, and the lateral safety zones (the length of each primary surface is the same as the runway length; the width of each primary surface is 2,000 feet (1,000 feet on each side of the runway centerline)*); (*See footnote at end of clause*)

(ii) the "clear zones" beyond the ends of each runway—*i.e.*, the extension of the "primary surface" for a distance of 1,000 feet beyond each end of each runway;

(iii) all taxiways plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, *i.e.*, a 75–foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and

(iv) all aircraft parking aprons plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) "*Safety precaution areas*" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway for a distance of 50,000 feet, first along an inclined (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continues upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white squares of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

*At some airfields the width of the primary surfaces is 1,500 feet (750 feet on each side of the runway centerline). In such instances, substitute the proper width in the clause.

7-603.50 *Quantity Surveys.*

(a) Except as provided in (b) below, insert the following clause in contracts containing unit price items where the specifications provide for payment based on surveys.

QUANTITY SURVEYS (1979 MAR)

(a) The Government shall make original and final surveys and make computations to determine the quantities of work performed or finally in place.

(b) The Contractor shall make such surveys and computations as are necessary to determine the quantities of work performed or placed during each period for which a progress payment is to be made. All original field notes, computations and other records for the purpose of layout and progress surveys shall be furnished promptly to the representatives of the Contracting Officer at the site of the work and shall be used by the Contracting Officer to the extent necessary in determining the proper amount of progress payments due the Contractor. A copy of the original notes, computations and records furnished to the Contracting Officer shall be retained by the Contractor. Unless waived by the Contracting Officer in each specific case, quantity surveys made by the Contractor shall be made under the direction of a representative of the Contracting Officer.

(End of clause)

(b) When Government personnel may not be available, it may be advisable to require the contractor to make original and final quantity surveys as well as progress surveys. In this case, the following clause may be used in place of the clause in (a) above, with the approval of the Head of the Procuring Activity or his designee.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

QUANTITY SURVEYS (1979 MAR)

(a) The Contractor shall make such surveys and computations as are necessary to determine the quantities of work performed or placed during each period for which a progress payment is to be made. The Contractor shall also make original and final surveys. The Government will make such computations as are necessary to determine the quantities of work performed or finally in place. Unless waived by the Contracting Officer in each specific case, quantity surveys made by the Contractor shall be made under the direction of a representative of the Contracting Officer.

(b) All original field notes, computations and other records of the Contractor for the purposes of layout, original, progress and final surveys shall be furnished promptly to the representative of the Contracting Officer at the site of the work and shall be used by the Contracting Officer to the extent necessary in determining the proper amounts of progress and final payments. A copy of the original notes, computations and records furnished to the Contracting Officer shall be retained by the Contractor.

(End of clause)

7-603.51 *Reserved.*

7-603.52 *Reserved.*

7-603.53 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-603.54 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-603.55 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-603.56 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-603.57 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-603.58 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-603.59 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-603.60 *Affirmative Action Compliance Requirements for Construction.* In accordance with 12-807.1 regarding affirmative action compliance requirements, insert the following clause in all applicable contracts involving construction in excess of $10,000.

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (1978 SEP)

(a) As used in this clause:

(1) "*Covered area*" means the geographical area described in the solicitation from which this contract resulted;

(2) "*Director*" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(3) "*Employer indentification number*" means the Federal social security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

(4) "*Minority*" includes:

- (i) *Black* (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) *Hispanic* (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
- (iii) *Asian and Pacific Islander* (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) *American Indian or Alaskan Native* (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of this clause and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g)(1) through (16) of this clause. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximun results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g)(2) above.

(6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least annually, the company's EEO policy and affirmative action obligations under this clause with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

(11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under this clause are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations ((g)(1) through (16)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g)(1) through (16) of this clause provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply. however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractors noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of this clause and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under this clause shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or this clause, the Director shall proceed in accordance with 41 CFR 60–4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

7-603.61 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-603.62 *Reserved.*

7-604 Additional Clauses. The following clauses shall be inserted in contracts when it is desired to cover the subject matter thereof in such contracts.

7-604.1 *Alterations in Contract.* (See 16-401.1(viii).) The following clause may be used if applicable, in negotiated contracts when Standard Form 23 is not used:

ALTERATIONS (1961 JAN)

The following alterations were made in this contract before it was signed by the parties hereto.

(End of clause)

7-604.2 *Approval of Contract.* The contract clause in 7-105.2 may be inserted.

7-604.3 *Layout of Work.* The following clause is authorized for use in construction contracts when appropriate.

LAYOUT OF WORK (1965 JAN)

The Contractor shall lay out his work from Government established base lines and bench marks indicated on the drawings and shall be responsible for all measurements in connection therewith. The Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, and materials and labor as may be required in laying out any part of the work from the base lines and bench marks established by the Government. The Contractor will be held responsible for the execution of the work to such lines and grades as may be established or indicated by the Contracting Officer. It shall be the responsibility of the contractor to maintain and preserve all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed, by the Contractor or through his negligence, prior to their authorized removal, they may be replaced by the Contracting Officer at his discretion. The expense of replacement will be deducted from any amounts due or to become due the Contractor.

(End of clause)

7–604.4 *Construction Warranty.*

(a) In accordance with 1–324, the following is an example of a clause that may be inserted, when applicable, in fixed-price construction contracts.

WARRANTY OF CONSTRUCTION (1974 APR)

(a) In addition to any other warranties set out elsewhere in this contract, the Contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the Contractor or any of his subcontractors or suppliers at any tier. Such warranty shall continue for a period of one year from the date of final acceptance of the work, but with respect to any part of the work which the Government takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date the Government takes possession. Under this warranty, the Contractor shall remedy at his own expense any such failure to conform or any such defect. In addition, the Contractor shall remedy at his own expense any damage to Government owned or controlled real or personal property, when that damage is the result of the Contractor's failure to conform to contract requirements or any such defect of equipment, material, workmanship, or design. The Contractor shall also restore any work damaged in fulfilling the terms of this clause. The Contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.

(b) The Government shall notify the Contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.

(c) Should the Contractor fail to remedy any failure, defect, or damage described in (a) above within a reasonable time after receipt of notice thereof, the Government shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the Contractor's expense.

(d) In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties expressed or implied, respecting any work and materials shall, at the direction of the Government, be enforced by the Contractor for the benefit of the Government. In such case if the Contractor's warranty under (a) above has expired, any suit directed by the Government to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of the Government. The Contractor shall obtain any warranties which the subcontractors, manufacturers, or suppliers would give in normal commercial practice.

(e) If directed by the Contracting Officer, the Contractor shall require any such warranties to be executed in writing to the Government.

(f) Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the Contractor or his subcontractors or suppliers at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage which results from any such defect in Government furnished material or design.

(g) The warranty specified herein shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistake, or fraud.

(End of clause)

(b) If the Government specifies the use of any equipment by "brand name and model," the following paragraph (h) should be added to the Warranty of Construction clause of the contract.

(h) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. The Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties in writing directly to the Government.

(c) Final payment shall not be withheld solely to provide security for the contractor's performance under the warranty with respect to possible future defects, without the approval of the Head of Procuring Activity which shall be given only in unusual circumstances.

7–604.5 *Reserved.*

7–604.6 *Reserved.*

7–604.7 *Contractor-Prepared Network Analysis System.*

(a) A clause substantially as set forth in (c) below is authorized for use in accordance with instructions in (b) below. Since the clause is broad in scope, modifications thereto will be necessary to accommodate individual project requirements.

(b)(1) *Paragraph (b)(2).* The requirements pertaining to the identification of separate buildings and features and to the minimum number of activities may be deleted for projects where this information is not needed. This portion should always be used when more than one line item is being constructed under a single contract to provide data for Government costing purposes. The column showing the minimum number of activities per building or feature may be deleted if not considered necessary.

(2) *Paragraph (b)(3).* The requirement for time scaling the summary network diagram may be deleted. The use of time scaling provides a more easily comprehended diagram for those not intimately familiar with a project and hence is of value to higher level management. It is also of considerable value for evaluating the utilization of resources of manpower and equipment and the scheduling of those activities which have slack available. On the other hand, revisions are much more difficult to make on time scaled diagrams requiring considerable if not complete redrafting. This makes time scaling more expensive to maintain and may result in delays in submitting diagrams. The advantages to management as against the possibility of additional cost and delay in submission must be considered in deciding whether time scaling should be included. If time scaling is omitted, references thereto in paragraph (e) should also be deleted.

(3) *Paragraphs (b)(4) and (b)(7).* Any items may be included or deleted as project requirements and local computer capabilities indicate. It should be noted that many computer system programs are written so as to provide only part of the information listed, and it is probable that there is no single program which will provide all. The listings should be revised to require only the minimum necessary for project management.

(4) *Paragraph (b)(6)(i).* Two means of estimating the computing time required can be used, (i) based on normal work days (excluding Saturdays, Sundays and holidays), or (ii) based on calendar days. This paragraph should be retained if the former method is to be used. If the latter method is to be used this paragraph should be deleted and the following inserted at the end of paragraph (b)(2): "In calculating activity durations, Saturdays, Sundays, holidays, and normal inclement weather should be considered."

(5) *Paragraph (b)(6)(ii) and (iii).* Requirements for manpower loading and list of equipment will be deleted unless the nature of the project is such as to make their inclusion necessary for proper surveillance by the resident engineer. When these requirements are deleted here, references thereto in other sections should also be deleted.

(6) *Paragraph* (*c*). The times allowed for the various submissions may be revised to fit individual project requirements based on project duration and complexity.

(7) *Paragraph* (*e*). The time for submission of periodic reports may be changed based on project requirements. Normally reports will be required twice a month with payments made once a month based on the work shown as accomplished in the last two reports.

(8) *Paragraph* (*f*). For partially completed activities a relatively broad estimate of the portion completed is normally adequate, for example, 25%, 50%, 75% or 100%, and the clause may be changed accordingly. Due to the multiplicity of activities and their normally small dollar value, a more precise evaluation frequently may be impractical. On activities with significant costs a more precise estimate should be used.

(9) Paragraphs (g), (h) and (i). The sheet size of diagrams and number of copies of report to be submitted may be revised to suit individual project requirements.

(c) *Contractor-Prepared Network Analysis System.*

CONTRACTOR-PREPARED NETWORK ANALYSIS SYSTEM (1968 APR)

The progress chart to be prepared by the Contractor pursuant to the General Provision entitled "Progress Charts and Requirements for Overtime Work" shall consist of a network analysis system as described below. In preparing this system the scheduling of construction is the responsibility of the Contractor. The requirement for the system is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating progress of the work.

(a) An example of one of the numerous acceptable types of network analysis systems is shown in Appendix I of Corps of Engineers Regulation ER 1–1–11 entitled "Network Analysis System," single copies of which are available to bona fide bidders on request. Other systems which are designed to serve the same purpose and employ the same basic principles as are illustrated in Appendix I will be accepted subject to the approval of the Contracting Officer.

(b) The system shall consist of diagrams and accompanying mathematical analyses. The diagrams shall show elements of the project in detail and the entire project in summary.

(1) Diagrams shall show the order and interdependence of activities and the sequence in which the work is to be accomplished as planned by the Contractor. The basic concept of a network analysis diagram will be followed to show how the start of a given activity is dependent on the completion of preceding activities and its completion restricts the start of following activities.

(2) Detailed network activities shown on a detailed or sub-network diagram shall include, in addition to construction activities, the submittal and approval of samples of materials and shop drawings, the procurement of critical materials and equipment, fabrication of special material and equipment and their installation and testing. All activities of the Government that affect progress, and contract required dates for completion of all or parts of the work will be shown. The detail of information shall be such that duration times of activities will range from three (3) to thirty (30) days with not over two percent (2%) of the activities exceeding these limits. The activities which comprise the following separate buildings and features shall be separately identifiable by coding or use of sub-networks or both:

Building or feature ....
Minimum number of activities ....

The selection and number of activities shall be subject to the Contracting Officer's approval. Detailed networks, when summary networks are also furnished, need not be time scaled but shall be drafted to show a continuous flow from left to right with no arrows from right to left. The following information shall be shown on the diagrams for each activity: preceding and following event numbers, description of the activity, cost, and activity duration.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(3) Summary Network. If the project is of such size that the entire network cannot be readily shown on a single sheet, a summary network diagram shall be provided. The summary network diagram shall consist of a minimum of fifty activities and a maximum of one hundred and fifty activities, and shall be based on and supported by detailed diagrams. Related activities shall be grouped on the network. The critical path shall be plotted generally along the center of the sheet with channels with increasing float placed towards the top or bottom. The summary network shall be time scaled using units of approximately one-half inch equals one week or other suitable scale approved by the Contracting Officer. Weekends and holidays shall be indicated. Where slack exists, the activities shall be shown at the time when they are scheduled to be accomplished.

(4) The mathematical analysis of the network diagram shall include a tabulation of each activity shown on the detailed network diagrams. The following information will be furnished as a minimum for each activity:

(i) preceding and following event numbers (numbers shall be selected and assigned so as to permit identification of the activities with bid items);
(ii) activity description;
(iii) estimated duration of activities (the best estimate available at time of computation);
(iv) earliest start date (by calendar date);
(v) earliest finish date (by calendar date);
(vi) scheduled or actual start date (by calendar date);
(vii) scheduled or actual finish date (by calendar date);
(viii) latest start date (by calendar date);
(ix) latest finish date (by calendar date);
(x) slack or float;
(xi) monetary value of activity;
(xii) responsibility for activity (Prime contractor, subcontractors, suppliers, Government, etc.);
(xiii) manpower required;
(xiv) percentage of activity completed;
(xv) contractor's earnings based on portion of activity completed; and
(xvi) bid item of which activity is a part.

(5) The program or means used in making the mathematical computation shall be capable of compiling the total value of completed and partially completed activities and subtotals from separate buildings or feature listed in paragraph (b)(2).

(6) In addition to the tabulation of activities, the computation will include the following data:

(i) identification of activities which are planned to be expedited by use of overtime or double shifts to be worked including Saturdays, Sundays and holidays;
(ii) on-site manpower loading schedule;
(iii) a description of the major items of construction equipment planned for operations of the project. (The description shall include the type, number of units and unit capacities. A schedule showing proposed time equipment will be on the job keyed to activities on which equipment will be used shall be provided); and
(iv) where portions of the work are to be paid by unit costs, the estimated number of units in an activity which was used in developing the total activity cost.

(7) The analysis shall list the activities in sorts or groups as follows:

(i) by the preceding event number from lowest to highest and then in the order of the following event number;
(ii) by the amount of slack, then in order of preceding event number;
(iii) by responsibility in order of earliest allowable start dates; and
(iv) in order of latest allowable start dates, then in order of preceding event numbers, and then in order of succeeding event numbers.

(c) Submission and approval of the system shall be as follows:

(1) A preliminary network defining the Contractor's planned operations during the first sixty (60) calendar days after notice to proceed will be submitted within ten (10) days. The Contractor's general approach for the balance of the project shall be indicated. Cost of activities expected to be completed or partially completed before submission and approval of the whole schedule should be included.

(2) The complete network analysis consisting of the detailed network mathematical analysis (on-site manpower loading schedule, equipment schedule) and network diagrams shall be submitted within forty (40) calendar days after receipt of notice to proceed.

(d) The Contractor shall participate in a review and evaluation of the proposed network diagrams and analysis by the Contracting Officer. Any revisions necessary as a result of this review shall be resubmitted for approval of the Contracting Officer within ten (10) calendar days after the conference. The approved schedule shall then be the schedule to be used by the Contractor for planning, organizing and directing the work and for reporting progress. If the Contractor thereafter desires to make changes in his method of operating and scheduling he shall notify the Contracting Officer in writing stating the reasons for the change. If the Contracting Officer considers these changes to be of a major nature he may require the Contractor to revise and submit for approval, without additional cost to the Government, all or the affected portion of the detailed diagrams and mathematical analysis and the summary diagram to show the effect on the entire project. A change may be considered of a major nature if the time estimated to be required or actually used for an activity or the logic of sequence of activities is varied from the original plan to a degree that there is a reasonable doubt as to the effect on the contract completion date or dates. Changes which affect activities with adequate slack time shall be considered as minor changes, except that an accumulation of minor changes may be considered a major change when their cumulative effect might affect the contract completion date.

(e) The Contractor shall submit at intervals of fifteen (15) calendar days a report of the actual construction progress by updating the mathematical analyses. Revisions causing changes in the detailed network shall be noted on the summary network, or a revised issue of affected portions of the detailed network furnished. The summary network shall be revised as necessary for the sake of clarity. However, only the initial submission or complete revisions need be time scaled. Subsequent minor revisions need not be time scaled.

(f) The report shall show the activities or portions of activities completed during the reporting period and their total value as basis for the Contractor's periodic request for payment. Payment made pursuant to the General Provision entitled "Payments to Contractor" will be based on the total value of such activities completed or partially completed after verification by the Contracting Officer. The report will state the percentage of the work actually completed and scheduled as of the report date and the progress along the critical path in terms of days ahead or behind the allowable dates. If the project is behind schedule, progress along other paths with negative slack shall also be reported. The Contractor shall also submit a narrative report with the updated analysis which shall include but not be limited to a description of the problem areas, current and anticipated, delaying factors and their impact, and an explanation of corrective actions taken or proposed.

(g) Sheet size of diagrams shall be 30 by 42 inches. Each updated copy shall show a date of the latest revision.

(h) Initial submittal and complete revisions shall be submitted in six (6) copies.

(i) Periodic reports shall be submitted in four (4) copies.

(End of clause)

7-604.8 *Government-Prepared Network Analysis System.*

(a) The clause in (b) below is authorized for use in accordance with the following instructions:

(1) *Paragraph (a).* This paragraph shall be used when the project is of long duration and a schedule of the first two months' operation is necessary for controlling the project until the "Construction Progress Schedule" is submitted. The blank will be filled in with the number of days desired. This paragraph will be deleted when the construction project is of short duration.

(2) *Paragraph (b).* Proper number of days for submittals shall be inserted by the contracting officer.

(3) Paragraph (c)(1) and (c)(2) shall be modified to agree with detail and type of network analysis system the Government proposes to prepare.

(b) *Government-Prepared Network Analysis System.*

GOVERNMENT-PREPARED NETWORK ANALYSIS SYSTEM (1968 APR)

The progress chart prepared by the Contractor pursuant to the General Provision entitled "Progress Charts and Requirements for Overtime Work" will include the following:

(a) The Contractor shall submit to the Contracting Officer a chart showing the initial progress schedule covering the first sixty (60) days of his construction operations within — days after receipt by him of the Notice to Proceed.

(b) The Contractor shall submit a chart showing the construction progress schedule in accordance with the General Provision entitled "Progress Charts and Requirements for Overtime Work" for the entire work under this contract within — days after receipt of the Notice to Proceed.

(c) In addition to the above information the Contractor will also provide information for the Government to prepare and maintain a surveillance system and verify progress payments using the network analysis system of scheduling as described in Appendix I of the Corps of Engineers Regulation, ER 1-1-11, entitled "Network Analysis System," single copies of which are available to bona fide bidders upon request. In preparing this data the scheduling is the responsibility of the Contractor. The requirement is included to assure adequate planning and execution of the work and to assist the Contracting Officer in appraising the reasonableness of the proposed schedule and evaluating the progress of the work. The data shall include, but not be limited to:

(1) A description of the Contractor's detailed construction plan of the project including the cost or weighted value, the order and interdependence, and the estimated duration of the activities which make up the project. Data shall be in sufficient detail to permit preparation of the network and schedule analysis by the Government.

(2) Revisions and updating of the data on scheduling with reasons for the revisions, as required by the Contracting Officer, shall be furnished by the Contractor in a timely and progressive manner to assist the Government in keeping the network and schedule analysis in a current working status.

(d) Pursuant to the General Provision entitled "Payments to Contractor," progress payments will be made on the basis of weighted value or cost assigned to each activity or group of activities as related to the total contract cost of the activity.

(End of clause)

7-605 Required Clauses for Cost-Reimbursement Type Construction Contracts. The following clauses shall be inserted in all cost-reimbursement type construction contracts:

7-605.1 *Statement of Work.*

STATEMENT OF WORK (1965 JAN)

The Contractor shall furnish all labor, materials, equipment, and services (except those furnished by the Government) for the construction of (insert a brief description of the project) in accordance with the drawings and specifications or instructions attached hereto as Appendix "A" and made a part hereof, or to be furnished hereafter by the Contracting Officer and subject in every detail to his supervision, direction and instructions.

(End of clause)

7-605.2 *Changes.* Insert the clause in 7-203.2 with the following changes in wording: Delete subparagraph (a) and substitute "The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in the plans and specifications or instructions incorporated herein." Delete the words "delivery schedule" from subparagraph (b)(i) and substitute the words "completion time."

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7-605.3 *Estimated Cost, Performance Period.*

ESTIMATED COST, PERFORMANCE PERIOD (1965 JAN)

It is estimated that the construction cost of work required under this contract will be .... Dollars, ($....................), exclusive of the Contractor's fee, and that the work herein contracted for will be ready for utilization by the Government on or before ...., 19........ It is expressly understood, however, that neither the Government nor the Contractor guarantees the correctness of either of these estimates.

(End of clause)

7-605.4 *Limitation of Cost.* Insert the clause in 7-203.3(a) or (b) with the following changes in wording: Delete the words "the schedule" wherever they appear and substitute the words "this contract".

7-605.5 *Allowable Cost, Fixed Fee, and Payment.* Insert the clause in 7-203.4(a) with the following changes:

(a) Delete paragraph (a) and substitute the following:

(a) For the performance of this contract, the Government shall pay to the Contractor:
- (i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—
  - (A) Section XV, Part 4, of the Armed Services Procurement Regulation as in effect on the date of this contract; and
  - (B) The terms of this contract; and
- (ii) a fixed fee in the amount of .... Dollars ($..............................).

(b) Delete paragraph (c) and substitute the following:

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (j) below, make payment thereon as approved by *the Contracting Officer*. Payment of the fixed fee, if any, shall be made to the Contractor in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer; *provided*, however, that after payment of eighty-five percent (85%) of the fixed fee set forth in (a) above, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the total fixed fee or one hundred thousand dollars ($100,000), whichever is less. (1978 AUG)

(c) The additional instructions for use of the clause as set forth in 7-203.4(c)(1), (2), (6) and (7) apply.

7-605.6 *Insurance.*

INSURANCE (1965 JAN)

(a) The Contractor shall procure and thereafter maintain such bonds and insurance in such forms and such amounts and for such periods of time as the Contracting Officer may require in writing and shall be reimbursed for the cost thereof.

(b) In every instance where this contract requires the United States to reimburse the Contractor for the payment of the premium on a bond or insurance policy, the bond or insurance policy shall contain an endorsement or other recital excluding by appropriate language any claim on the part of the insurer or obligor to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

(c) The Contractor shall give the Contracting Officer or his representative immediate notice in writing of any suit or action filed against the Contractor arising out of the performance of this contract and of any claim against the Contractor the cost and expense of which are reimbursable under the provisions of the Clause entitled "Allowable Cost, Fixed Fee and Payment" hereof, and the risk of which is then uninsured or in which the amount claimed exceeds the amount of insurance coverage. The Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor. Insofar as the following shall not conflict with any policy or contract of insurance, and upon request of the Contracting Officer, the Contractor shall do any and all things to effect an assignment and subrogation in favor of the Government, of all Contractor's rights and claims except against the Government, arising from or growing out of such asserted claims, and if required by the Contracting Officer, shall authorize representatives of the Government to settle and/or defend any such claim and to represent or take charge of any such litigation affecting the Contractor.

(End of clause)

7-605.7 *Direction of Work.*

DIRECTION OF WORK (1977 DEC)

During the performance of this contract, the work shall be under the full-time resident direction of the Contractor, if an individual; of one or more principal partners if the Contractor is a partnership; or in case the Contractor is a corporation, association, or similar legal entity, one or more senior officers thereof; provided, however, that the Contractor, whether an individual, a partnership, a corporation, or other legal entity, may be represented in the direction of the work by some person of a class other than those specified above, if the Contracting Officer gives his approval.

(End of clause)

7-605.8 *Discounts.*

DISCOUNTS (1965 JAN)

The Contractor shall, to the extent of his ability, take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and bonifications, and when unable to take advantage of such benefits he shall promptly notify the Contracting Officer of the reason therefor. In determining the actual net cost of articles and materials of every kind required for the purpose of this contract, there shall be deducted from the gross cost thereof all cash and trade discounts, rebates, allowances, credits, commissions, and bonifications which have accrued to the benefit of the Contractor or would have so accrued but for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(End of clause)

7-605.9 *Direct Payments.*

DIRECT PAYMENTS (1965 JAN)

(a) *To Suppliers, Laborers, and Mechanics.* If bills for purchase of material, machinery or equipment, or payrolls covering employment of laborers or mechanics incurred by the Contractor or by any subcontractor hereunder are not paid promptly by the Contractor or subcontractor, as the case may be, the Contracting Officer may, in his discretion, withhold from payments otherwise due the Contractor an amount equivalent to the amount of any such bill or payroll. Should the Contractor neglect or refuse to pay such bills or payrolls or to direct any subcontractor to pay such bills or payrolls within five (5) days after notice from the Contracting Officer so to do, the Government shall have the right to pay such bills or payrolls directly, and in such event a deduction equal to five per cent (5%) of the amount so paid directly shall be made from the Contractor's fee.

(b) *To Common Carriers*. The Government reserves the right to pay directly to common carriers any or all freight charges on construction plant, materials and supplies.

(End of clause)

7-605.10 *Approved Construction Plant.*

APPROVED CONSTRUCTION PLANT (1965 JAN)

Upon approval of the Contracting Officer, construction plant furnished by the Contractor will be shown in the attached Appendix "B" or modification thereto.

(End of clause)

7-605.11 *Audit by Department of Defense*. In accordance with 7-104.41(a), insert the clause therein.

7-605.12 *Price Reduction for Defective Cost or Pricing Data*. In accordance with 7-104.29(a), insert the clause therein.

7-605.13 *Subcontractor Cost and Pricing Data*. In accordance with 7-104.42(a), insert the clause therein.

7-605.14 *Government Property*. Insert the clause in 7-203.21.

7-605.15 *Examination of Records by Comptroller General*. In accordance with 7-104.15, insert the clause therein.

7-605.16 *Contracting Officer's Decisions.*

CONTRACTING OFFICER'S DECISIONS (1965 JAN)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

7-605.17 *Disputes*. In accordance with 7-602.6, insert the clauses therein.

7-605.18 *Labor*. In accordance with 18-703, insert the clause in 7-602.23.

7-605.19 *Equal Opportunity*. In accordance with 12-807.1 insert the appropriate clause in 7-103.18.

7-605.20 *Notice to the Government of Labor Disputes*. In accordance with 7-104.4, insert the clause therein.

7-605.21 *Special Requirements.*

SPECIAL REQUIREMENTS (1965 JAN)

The Contractor hereby agrees that he will:

(a) Be responsible for obtaining any necessary licenses and permits, and complying with any applicable Federal, State and municipal laws, codes, and regulations in connection with the prosecution of the work.

(b) Reduce to writing, unless this provision is waived in writing by the Contracting Officer, every contract in excess of Two Thousand Dollars ($2,000) made by him for the purpose of the work hereunder for services, materials, supplies, machinery, equipment, or for the use thereof, insert therein a provision that such contract is assignable to the Government, make all such contracts in his own name, and not bind or purport to bind the Government or the Contracting Officer thereunder.

(c) Furnish sufficient technical, supervisory and administrative personnel to insure the prosecution of the work in accordance with the progress schedule approved by the Contracting Officer.

(d) Cause all work under this contract to be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

7-605.22 *Composition of Contractor.* In accordance with 7-602.32, insert the clause therein.

7-605.23 *Subcontracts.* In accordance with 23-201.2, insert the clause in 7-203.8.

7-605.24 *Accident Prevention.* In accordance with 7-602.42, insert the clause therein.

7-605.25 *Contractor's Organization and Methods.*

CONTRACTOR'S ORGANIZATION AND METHODS (1965 JAN)

Upon the execution of this contract, the Contractor shall submit to the Contracting Officer a chart showing in general the executive and administrative organization, duties, and personnel to be employed in connection with the work under the contract; and the data so furnished shall be supplemented as additional information becomes available.

(End of clause)

7-605.26 *Termination.* In accordance with 8-702(a), insert the following clause.

TERMINATION—CONSTRUCTION (1974 APR)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

- (i) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or
- (ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its

discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(vi) transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(i) if the settlement includes cost and fee—

(A) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer; *provided*, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(B) there shall be included therein so far as not included under (A) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract;

(C) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts, thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; *provided*, however, that if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(D) there shall be included therein a portion of the fee payable under the contract determined as follows—

(I) in the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractors' termination claims, less fee payments previously made hereunder; or

(II) in the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee as the actual work in place bears to the total work in place required by the contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount; or

(ii) if the settlement includes only the fee, the amount thereof will be determined in accordance with the subparagraph (i)(D) above.

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), and (e) hereof shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause, there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract; (ii) any claim which the Government may have against the Contractor in connection with this contract; and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of the clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

(End of clause)

7-605.27 *Convict Labor.* In accordance with 12-203, insert the clause in 7-104.17.

7-605.28 *Officials Not To Benefit.* In accordance with 7-602.19, insert the clause therein.

7-605.29 *Covenant Against Contingent Fees.* In accordance with 7-103.20, insert the clause therein.

7-605.30 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-605.31 *Assignment of Claims.* If the contract is negotiated in contemplation that the contractor may make an assignment, insert the clause in 7-602.8.

7-605.32 *Renegotiation.* In accordance with 7-103.13, insert the clause therein.

7-605.33 *Authorization and Consent.* In accordance with 9-102.1 and 18-902, insert the appropriate clause in 7-103.22 or 7-302.21.

7-605.34 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104 and 18-904, insert the clause in 7-103.23.

7-605.35 *Patent Indemnity.* In accordance with 18-903.3, insert the clause in 7-602.16.

7-605.36 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-605.37 *Competition in Subcontracting.* Insert the clause in 7-104.40.

7-605.38 *Definitions.* In accordance with 7-602.1, insert the clause therein.

7-605.39 *Excusable Delays.* In accordance with 8-708(a), insert the clause in 7-203.11 deleting the words "delivery schedule" in the last sentence and substituting the words "completion time."

7-605.40 *Rights in Shop Drawings.* In accordance with 18-910.1(b), insert the clause in 7-602.47.

7-605.41 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-605.42 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-605.43 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-605.44 Reserved.

7-605.45 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-605.46 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-605.47 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-605.48 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-606 Clauses To Be Used When Applicable for Cost-Reimbursement Type Construction Contracts.

7-606.1 *Incentive Fee Clause for Cost-Type Construction Contracts.* Cost type construction contracts may provide for incentive fee adjustment in accordance with 3-405.4. Incentive fee cost reimbursement construction contracts will be prepared by using the cost-plus-a-fixed-fee construction contract format set forth in 16-402.3, including the clauses in 7-605 and 7-606, modified in the following particulars:

(i) change the title of the format to read "Cost-Plus-Incentive-Fee Construction Contract;"

(ii) delete the clause entitled "Allowable Cost, Fixed Fee and Payment;"

(iii) insert the clause in 7-203.4(b) entitled "Allowable Cost, Incentive Fee and Payment" with the following changes:

(A) Delete paragraph (a)(1) and substitute:

For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Section XV, Part 4, of the Armed Services Procurement Regulation as in effect on the date of this contract; and

(B) The terms of this contract; and

(ii) A fee in the amount of .... dollars ($..................) adjusted as provided in (i) below.

(B) Delete paragraph (c) and substitute the following:

Promptly after receipt of each invoice or voucher and statement of cost the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fee shall be made to the Contractor in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer; *provided*, however, that after payment of ninety-five percent (95%) of the minimum fee provided for in (i) below, the Contracting Officer may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed fifteen percent (15%) of the target fee or one hundred thousand dollars ($100,000), whichever is less.

(C) The additional instructions for use of the clause in 7-203.4(c)(1), (2), (5), (6), and (7) apply.

7-606.2 *Approval of Wage Rates*. Insert the following clause in contracts to be performed in the United States:

APPROVAL OF WAGE RATES (1965 JAN)

All wage rates in excess of the applicable Davis-Bacon Wage rates for this contract, including compensation for overtime pursuant to paragraph 2 of Standard Form 19-A, for laborers and mechanics engaged in work under this contract shall be approved in writing by the Head of a Procuring Activity or a representative expressly designated by him for this purpose. Any amount paid by the Contractor to any laborer or mechanic in excess of the wage rate approved for such laborer or mechanic by the Head of a Procuring Activity or a representative expressly designated by him for that purpose shall be at the expense of the Contractor and shall not be reimbursed by the Government.

(End of clause)

7-606.3 *Buy American*. In accordance with 7-602.20, insert the clause therein.

7-606.4 *Nondomestic Construction Materials*. In accordance with 7-602.24, insert the clause therein.

7-606.5 *Priorities, Allocations, and Allotments*. In accordance with 1-307.2, insert the clause in 7-104.18.

7-606.6 *Interest*. In accordance with E-620, insert the clause in 7-104.39.

7-606.7 *Military Security Requirements*. In accordance with 7-104.12, insert the clause therein, modified in accordance with 7-204.12.

7-606.8 *Workmen's Compensation and War Hazard Insurance Overseas*. In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause *Reimbursement for War Hazard Losses* in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-606.9 *Use of Excess and Near Excess Currency*. In accordance with 6-1110, insert the clause in 7-104.66.

7-606.10 *Alterations*. In accordance with 7-604.1, insert the clause therein.

7-606.11 *Payment for Overtime Premiums*. In accordance with 12-102, insert the clause in 7-203.27.

7-606.12 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation*. In accordance with 7-104.81, insert the clause therein.

7-606.13 *Approval of Contract*. In accordance with 7-105.2, insert the clause therein.

7-606.14 *Architectural Designs and Data—Government Rights*. In accordance with 18-910.1(a), insert one of the two clauses in 7-603.42(a)(1) or (2), if appropriate.

7-606.15 *Identification of Expenditures in the United States*. In accordance with Section VI, Part 8, insert the clause in 7-104.58.

7-606.16 *Reserved*.

7-606.17 *North Carolina State and Local Sales and Use Tax*. In accordance with 11-302(c), insert the clause in 7-602.27.

7-606.18 *Airfield Safety Precautions*. Insert the following clause in contracts to be performed on or near airfields when it is desired to cover the subject matter thereof.

AIRFIELD SAFETY PRECAUTIONS (1968 APR)

(a) The operation of all ground equipment (mobile or stationary), the placement of all materials, and the performance of all work, upon and in the vicinity of all airfields, shall be done in accordance with this clause. The requirements of this clause are in addition to any other safety requirements of this contract.

(b) For purposes of this clause the following definitions shall apply.

(1) "*Landing Areas*" means the following:

- (i) the primary surfaces which are comprised of the surface of the runways, the runway shoulders, and the lateral safety zones (the length of each primary surface is the same as the runway length; the width of each primary surface is 2000 feet (1000 feet on each side of the runway centerline)*); (*See footnote at end of clause*)
- (ii) the "clear zones" beyond the ends of each runway—*i.e.*, the extension of the "primary surface" for a distance of 1,000 feet beyond each end of each runway;
- (iii) all taxiways plus the lateral clearance zones along each side for the length of the taxiways (the outer edge of each lateral clearance zone is laterally 250 feet from the far or opposite edge of the taxiway, *i.e.*, a 75-foot-wide taxiway would have a combined width of taxiway and lateral clearance zones of 425 feet); and
- (iv) all aircraft parking aprons plus the area 125 feet in width extending beyond each edge all around the aprons.

(2) "*Safety precaution areas*" means those portions of approach-departure clearance zones and transitional zones where placement of objects incident to contract performance might result in vertical projections at or above the approach-departure clearance surface or the transitional surface.

(A) The "approach-departure clearance surface" is an extension of the primary surface and the clear zone at each end of each runway, for a distance of 50,000 feet, first along an inclined plane (glide angle) and then along a horizontal plane, both flaring symmetrically about the runway centerline extended. The inclined plane (glide angle) begins in the clear zone 200 feet past the end of the runway (and primary surface) at the same elevation as the end of the runway, and continues upward at a slope of 50:1 (one foot vertically for each 50 feet horizontally) to an elevation of 500 feet above the established airfield elevation; at that point the plane becomes horizontal, continuing at that same uniform elevation to a point 50,000 feet longitudinally from the beginning of the inclined plane (glide angle) and ending there. The width of the surface at the beginning of the inclined plane (glide angle) is the same as the width of the clear zone; thence it flares uniformly, reaching the maximum width of 16,000 feet at the end.

(B) The "approach-departure clearance zone" is the ground area under the approach-departure clearance surface.

(C) The "transitional surface" is a sideways extension of all primary surfaces, clear zones, and approach-departure clearance surfaces along inclined planes. The inclined plane in each case begins at the edge of the surface. The slope of the inclined plane is 7:1 (one foot vertically for each 7 feet horizontally), and it continues to the point of intersection with the inner horizontal surface (which is the horizontal plane 150 feet above the established airfield elevation) or the outer horizontal surface (which is the horizontal plane 500 feet above the established airfield elevation), whichever is applicable.

(D) The "transitional zone" is the ground area under the transitional surface. (It adjoins the primary surface, clear zone and approach-departure clearance zone.)

(c) The Contractor shall report to the Contracting Officer before initiating any work and shall notify him of proposed changes of locations and operations.

(d) Neither equipment nor personnel shall use any runway for purposes other than aircraft operation without permission of the Contracting Officer unless the runway is closed by order of the Contracting Officer and marked as provided in (e)(2) below.

(e)(1) The Contractor shall place nothing upon the landing areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, the Contractor shall outline those landing areas hazardous to aircraft, with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) Before entering any landing area at an airfield where flying is controlled, additional permission must be obtained every time from the control tower operator, unless the landing area is marked as hazardous to aircraft in accordance with (2) above.

(4) All vehicles which the Contractor operates in landing areas shall be identified by means of a flag on a staff attached to and flying above the vehicle. The flag shall be three feet square and shall consist of a checkered pattern of international orange and white squares of one foot on each side (except that the flag may vary up to 10 percent from each of these dimensions).

(5) Unless otherwise authorized by the Contracting Officer, all other equipment and materials in the landing areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(6) Work shall be carried on so as to leave that portion of the landing area which is available to aircraft free from hazards, holes, piles of material, and projecting shoulders that might damage an airplane tire.

(f)(1) The Contractor shall place nothing upon the safety precaution areas without authorization of the Contracting Officer.

(2) Unless otherwise authorized by the Contracting Officer, all equipment and materials in safety precaution areas shall be marked with red flags by day, and with electric, battery-operated, low-intensity red flasher lights by night.

(3) All objects, placed in safety precaution areas, which project above the approach-departure clearance surface or above the transitional surface must be provided at night with a red light or red lantern.

(g) The Contractor shall keep all paved surfaces, such as runways, taxiways, and hardstands, clean at all times and, specifically, free from small stones which might damage aircraft propellers or jet aircraft.

(h) While work is actually being performed on the airfield by the Contractor, the operation of mobile equipment shall be governed by the safety provisions above. At all other times all mobile equipment shall be removed to locations approved by the Contracting Officer at a distance of at least 750 feet from the runway centerline plus any additional distance necessary to insure compliance with the other provisions of this clause.

(i) Only those trenches may be opened for which material is on hand and ready for placing therein. As soon as practicable after material has been placed and work approved, trenches shall be backfilled and compacted as required by the contract. Meanwhile all hazardous conditions shall be marked and lighted in accordance with the other provisions of this clause.

(End of clause)

* At some airfields the width of the primary surfaces is 1500 feet (750 feet on each side of the runway centerline). In such instances substitute the proper width in the clause.

7-606.19 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-606.20 *Reserved.*

7-606.21 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-606.22 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-606.23 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-606.24 *Value Engineering.* A VE Incentive or Program Requirement clause may be included in Cost-Reimbursement Type construction contracts at the discretion of the Contracting Officer. Use 7-602.50 or 7-104.44 (as modified by 7-204.32(b) or (c)) to suit the procurement.

7-606.25 *Patent Rights.* In accordance with 9-107 and 18-908, insert the appropriate clause in 7-302.23.

7-606.26 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-606.27 *Reporting of Royalties.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-606.28 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-606.29 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-606.30 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-606.31 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-606.32 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-606.33 *Reserved.*

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-607 Required Clauses for Fixed-Price Architect-Engineer Contracts. The following clauses shall be inserted in all fixed-price architect-engineer contracts:

7-607.1 *Definitions.*

DEFINITIONS (1972 APR)

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, or any other head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

(End of clause)

Additional definitions may be included *provided* they are not inconsistent with the foregoing clause or the provisions of this Regulation.

7-607.2 *Responsibility of the Architect-Engineer.*

RESPONSIBILITY OF THE ARCHITECT-ENGINEER (1972 APR)

(a) The Architect-Engineer shall be responsible for the professional quality, technical accuracy and the coordination of all designs, drawings, specifications, and other services furnished by the Architect-Engineer under this contract. The Architect-Engineer shall, without additional compensation, correct or revise any errors or deficiencies in his designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Architect-Engineer shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Architect-Engineer's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(End of clause)

7-607.3 *Changes.*

CHANGES (1972 APR)

(a) The Contracting Officer may, at any time, by written order, make changes within the general scope of the contract in the services to be performed. If such changes cause an increase or decrease in the Architect-Engineer's cost of, or time required for, performance of any services under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the Architect-Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Architect-Engineer of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract.

(b) No services for which an additional cost or fee will be charged by the Architect-Engineer shall be furnished without the prior written authorization of the Contracting Officer.

(End of clause)

7-607.4 *Termination.*

TERMINATION (1972 APR)

(a) The Contracting Officer may, by written notice to the Architect-Engineer, terminate this contract in whole or in part at any time, either for the Government's convenience or because of the failure of the Architect-Engineer to fulfill his contract obligations. Upon receipt of such notice, the Architect-Engineer shall: (1) immediately discontinue all services affected (unless the notice directs otherwise), and (2) deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Architect-Engineer in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Government, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

(c) If the termination is due to the failure of the Architect-Engineer to fulfill his contract obligations, the Government may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Architect-Engineer shall be liable to the Government for any additional cost occasioned to the Government thereby.

(d) If, after notice of termination for failure to fulfill contract obligations, it is determined that the Architect-Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Government. In such event, adjustment in the contract price shall be made as provided in paragraph (b) of this clause.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

7–607.5 *Disputes.*

(a) Except as provided in (b) below, insert the following clause:

DISPUTES (1972 APR)

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Architect-Engineer. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Architect-Engineer mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the head of the agency involved. The decision of the head of the agency or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this contract as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged; *provided, however*, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Architect-Engineer shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Architect-Engineer shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(End of clause)

In accordance with departmental procedures, the foregoing clause may be modified to provide for intermediate appeal in overseas areas. The decision shall, if mailed, be sent by certified mail, return receipt requested.

(b) In procurement to be performed outside the United States, its possessions and Puerto Rico, when it is anticipated that the architect-engineer will be a foreign firm, one of the clauses provided for in 7–103.12(b) will be inserted in accordance with the instructions therein, substituting "Architect-Engineer" for "Contractor."

(c) The form in which the contracting officer shall notify the architect-engineer of his decision under the Disputes Clause, is in 1–314.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-607.6 *Assignment of Claims.*

ASSIGNMENT OF CLAIMS (1976 OCT)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Architect- Engineer from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act; and is with the Department of Defense, the General Services Administration, the Energy Research and Development Administration, the National Aeronautics and Space Administration, the Federal Aviation Administration, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(End of clause)

7-607.7 *Architectural Designs and Data — Government Rights.*

(a) Except as provided in (b) below, insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (1979 MAR)

The Government shall have unlimited rights, in all drawings, designs, specifications, notes and other works developed in the performanceof this contract, including the right to use same on any other Government design or construction without additional compensation to the Architect-Engineer. The Architect-Engineer hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Architect-Engineer for a period of three years after completion of the project agrees to furnish the original or copies of all such works in the request of the Contracting Officer.

(End of clause)

(b) When, in accordance with 18-910.1(a)(2), it is desired to acquire exclusive control of data pertaining to design, the unlimited rights clause in (a) above shall be deleted from Standard Form 253 and the following clause substituted therefor:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (1979 MAR)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Architect-Engineer. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Architect-Engineer agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Architect-Engineer for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Architect-Engineer shall have the right to retain copies of all works beyond such period.

(End of clause)

7-607.8 *Examination of Records by Comptroller General.* Insert the clause in 7-104.15 substituting "Architect-Engineer" for "Contractor."

7-607.9 *Covenant Against Contingent Fees.*

COVENANT AGAINST CONTINGENT FEES (1972 APR)

The Architect-Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Architect-Engineer for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

(End of clause)

7-607.10 *Officials Not to Benefit.*

OFFICIALS NOT TO BENEFIT (1972 APR)

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

(End of clause)

7-607.11 *Contract Work Hours and Safety Standards Act — Overtime Compensation.*

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT — OVERTIME COMPENSATION (1972 APR)

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Architect-Engineer or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Architect-Engineer and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Architect-Engineer and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Architect-Engineer, from any moneys payable on account of work performed by the Architect-Engineer or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Architect-Engineer or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) Subcontracts. The Architect-Engineer shall insert paragraph (a) through (d) of this clause and the preamble in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records. The Architect-Engineer shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

(End of clause)

7-607.12 *Convict Labor.*

CONVICT LABOR (1975 OCT)

In connection with the performance of work under this contract, the Architect-Engineer agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C 4082(c)(2)) and Executive Order 11755, December 29, 1973.

(End of clause)

7-607.13 *Equal Opportunity Clause.*

EQUAL OPPORTUNITY (1978 SEP)

(If during any 12-month period (including the twelve (12) months preceding the award of this contract), the Contractor has been or is awarded Federal contracts and/or subcontracts which have an aggregate value in excess of $10,000, the Contractor shall comply with (a) through (g) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause. Also, the following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60).)

During the performance of this contract, the Architect-Engineer agrees as follows:

(a) The Architect-Engineer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Architect-Engineer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Architect-Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this Equal Opportunity clause.

(b) The Architect-Engineer will, in all solicitations or advertisements for employees placed by or on behalf of the Architect-Engineer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Architect-Engineer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Architect-Engineer's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Architect-Engineer will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Architect-Engineer will furnish all information and reports required by Executive Order No. 11264 of September 24, 1965, as amended by Executive Order No. 11375 of October

13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Architect-Engineer's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Architect-Engineer may be declared ineligible for further Government contracts, in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule or regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Architect-Engineer will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204, of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Architect-Engineer will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; *provided, however*, that in the event the Architect-Engineer becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Architect-Engineer may request the United States to enter into such litigation to protect the interests of the United States.

(End of clause)

7-607.14 *Method of Payment.*

METHOD OF PAYMENT (1976 OCT)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Architect-Engineer under this contract, such estimates to be prepared by the Architect-Engineer and accompanied by such supporting data as may be required by the Contracting Officer.

(b) Upon approval of such estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Architect-Engineer as soon as practicable of 90% of the amount as determined above, less all previous payments; *provided*, however, that payment may be made in full during any month or months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Government, he may at his discretion release to the Architect-Engineer such excess amount.

(c) Upon satisfactory completion by the Architect-Engineer and acceptance by the Contracting Officer of the work done by the Architect-Engineer in accordance with the "Statement of Architect-Engineer Services" (Appendix A of the contract), the Architect-Engineer will be paid the unpaid balance of any money due for work under said statement, including retained percentages relating to this portion of the work. In the event that the Government exercises the option under the "*Option for Supervision and Inspection Services*" clause, progress payments as provided for in (a) and (b) above will be made for this portion of the contract work. Upon satisfactory completion of the construction work and its final acceptance, the Architect-Engineer shall be paid the unpaid balance of any money due hereunder.

(d) Prior to final payment under the contract, or prior to settlement upon termination of the contract, and as a condition precedent thereto, the Architect-Engineer shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than such claims, if any, as may be specifically excepted by the Architect-Engineer from the operation of the release in stated amounts to be set forth therein.

End of clause)

7-607.15 *Contracting Officer's Decisions.*

CONTRACTING OFFICER'S DECISIONS (1965 JAN)

The extent and character of the work to be done by the Architect-Engineer shall be subject to the general supervision, direction, control and approval of the Contracting Officer.

(End of clause)

7-607.16 *Subcontractors and Outside Associates and Consultants.*

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (1965 JAN)

Any subcontractors and outside associates or consultants required by the Architect-Engineer in connection with the services covered by the contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Any substitution in such subcontractors, associates, or consultants will be subject to the prior approval of the Contracting Officer.

(End of clause)

7-607.17 *Renegotiation.* In accordance with 7-103.13, insert the appropriate clause therein, substituting "Architect-Engineer" for "Contractor."

7-607.18 *Gratuities.* In accordance with 7-104.16, insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-607.19 *Interest.* In accordance with E-620, insert the clause in 7-104.39, substituting "Architect-Engineer" for "Contractor."

7-607.20 *Composition of Architect-Engineer.*

COMPOSITION OF ARCHITECT-ENGINEER (1972 APR)

If the Architect-Engineer hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

7-607.21 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-607.22 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein, substituting "Architect-Engineer" for Contractor."

7-607.23 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27, substituting "Architect-Engineer" for "Contractor".

7-607.24 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-607.25 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-607.26 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82, substituting "Architect-Engineer's" for "Contractors' " in the title of the clause, and substituting "Architect-Engineer" for "Contractor" in the body of the clause.

7-607.27 *Suspension of Work.*

SUSPENSION OF WORK (1976 OCT)

(a) The Contracting Officer may order the Architect-Engineer in writing to suspend all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended or delayed by an act of the Contracting Officer in the administration of this contract, or by his failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in cost of performance of this contract (excluding profit) necessarily caused by such unreasonable suspension or delay, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension or delay to the extent (1) that performance would have been suspended or delayed by any other cause, including the fault or negligence of the Architect-Engineer or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.

(c) No claim under this clause shall be allowed (1) for any costs incurred more than twenty (20) days before the Architect-Engineer shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension or delay, but not later than the date of final payment. No part of any claim based on the provisions of this clause shall be allowed if not supported by adequate evidence showing that the cost would not have been incurred but for a delay within the provisions of this clause.

(End of clause)

7-608 Clauses To Be Used When Applicable for Fixed-Price Architect-Engineer Contracts.

7-608.1 *Insurance.* In accordance with 10-405, insert the clause in 7-603.10, substituting "Architect-Engineer" for "Contractor."

7-608.2 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50, substituting "Architect-Engineer" for "Contractor."

7-608.3 *Redesign Responsibility.*

(a) Insert the following clause in all Architect-Engineer contracts except (i) those involving projects for which the Head of Procuring Activity or his designee determines that cost limitations are secondary to performance considerations and that additional funding can be expected if necessary, and (ii) those for the design of a standard structure which is not intended for a specific location site.

DESIGN WITHIN FUNDING LIMITATIONS (1971 APR)

(a) The Architect-Engineer shall accomplish the design services required under this contract so as to permit the award of a contract, pursuant to standard Department of Defense procedures, for the construction of the facilities designed at a price that does not exceed the estimated construction contract price set forth in this contract. When bids or proposals for the construction contract are received which exceed such estimated price, the Architect-Engineer shall perform such redesign and other services as are necessary to permit contract award within such funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Architect-Engineer shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond his reasonable control.

(b) The Architect-Engineer will promptly advise the Contracting Officer if he finds that the project being designed will exceed or is likely to exceed the funding limitations and he is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Architect-Engineer's revised estimate of construction cost. The Contracting Officer may, if he determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth elsewhere in the contract, or he may adjust such estimated construction contract price. When bids or proposals are not solicited or where they are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate will be used in lieu of bids or proposals to determine compliance with the funding limitation.

(End of clause)

(b) Whenever the clause set forth in (a) above is included in a contract, the following statement shall be inserted in the description of the work to be performed by the Architect-Engineer.

The estimated construction contract price for the project described herein is $................

The figure to be inserted in this statement is to be established at the beginning of contract negotiations by agreement between the Architect-Engineer and the Government. Such estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the figure to be inserted, the Contracting Officer should make available to the Architect-Engineer the information upon which the Government has based its initial estimate and any subsequently acquired information which may affect the construction cost.

7-608.4 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-608.5 *Option for Supervision and Inspection Services.* The following clause may be included in any fixed-price architect-engineer contract if supervision and inspection services by the architect-engineer during construction are contemplated. The details of such services must be set out in Appendix A of the contract.

OPTION FOR SUPERVISION AND INSPECTION SERVICES (1972 APR)

At any time prior to six (6) months after satisfactory completion and acceptance of the work to be furnished hereunder, the Government at its option, may direct, by a written order, the Architect-Engineer to perform any part or all of the supervision and inspection services provided under Appendix A. Upon receipt of such direction, the Architect-Engineer shall proceed with such work and services.

(End of clause)

7-608.6 *Requirements for Registration of Designers.* The following clause shall be inserted in fixed-price architect-engineer contracts, except that it may be omitted from any contract (1) when the design is to be performed outside the United States, its possessions, or Puerto Rico, or (2) when the design is to be performed in a State or possession which does not have registration requirements for the particular field involved:

REQUIREMENTS FOR REGISTRATION OF DESIGNERS (1972 APR)

The design of architectural, structural, mechanical, electrical, civil or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)

7-608.7 *Accident Prevention.* Insert the clause in 7-602.42, except in contracts where no field work is involved, substituting "Architect-Engineer" for "Contractor."

7-608.8 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.9 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.10 *Subcontractor Cost or Pricing Data.* In accordance with 7-104.42(a), insert the clause therein, substituting "Architect-Engineer" for "Contractor."

7-608.11 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58, substituting "Architect-Engineer" for "Contractor."

7-608.12 *Authorization and Consent.* In accordance with 18-902.1 and 18-902.2, insert the appropriate clause in 7-103.22 or 7-302.21, substituting "Architect-Engineer" for "Contractor."

7-608.13 *Notice and Approval of Restricted Designs.* In accordance with 18-905, insert the following clause.

NOTICE AND APPROVAL OF RESTRICTED DESIGNS (1972 APR)

In the performance of this contract, the Architect-Engineer shall, to the extent practicable, make maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through Government or competitive commercial channels, or through standard or proven production techniques, methods, and processes. Unless approved by the Contracting Officer the Architect-Engineer shall not, in the performance of the work called for by this contract, produce a design or specification such as to require in this construction work the use of structures, products, materials, construction equipment, or processes which are known by the Architect-Engineer to be available only from a sole source. As to any such design or specification the Architect-Engineer shall report to the Contracting Officer giving the reason or reasons why it is considered necessary to so restrict the design or specification.

(End of clause)

7-608.14 *Patent Rights.* In accordance with 9-107 and 18-908(a), insert the appropriate clause in 7-302.23, substituting "Architect-Engineer" for "Contractor."

7-608.15 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6 in every classified contract which covers or is likely to cover classified subject matter, substituting "Architect-Engineer" for "Contractor."

7-608.16 *Alterations.* In accordance with 7-604.1, insert the clause therein.

7-608.17 *Rights in Data.* In accordance with 18-910.2 and 18-910.3, insert the appropriate clause, or clauses, in 7-104.9, substituting "Architect-Engineer" for "Contractor."

7-608.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83, substituting "Architect-Engineer" for "Contractor."

7-608.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-608.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-608.21 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-608.22 *Reserved.*

7-608.23 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-608.24 *Reserved.*

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 7—Facilities Contracts

7-701 Applicability. As used throughout this Part, the term "facilities contract" means a contract under which Government facilities are provided to a contractor by the Government for use in connection with the performance of a separate contract or contracts for supplies or services. When property other than facilities is provided under a facilities contract, it shall be considered facilities for the purposes of that contract. Facilities contracts may take any of the following forms:

(i) consolidated facilities contracts, which provide for both—
  (A) the acquisition, construction, and installation of facilities; and
  (B) the use, maintenance, accountability, and disposition of facilities;
(ii) facilities acquisition contracts, which provide for the acquisition, construction, and installation of facilities; or
(iii) facilities use contracts, which provide for the use, maintenance, accountability, and disposition of facilities.

7-702 Required Clauses for Consolidated Facilities Contracts. The following clauses shall be inserted in all consolidated facilities contracts.

7-702.1 *Definitions.* Insert the clause set forth in 7-103.1, changing the title date to "(1964 SEP)" and adding the following:

> (d) "Related procurement contract" means a Government contract or subcontract thereunder for furnishing supplies or services of any description, for the performance of which the use of the Facilities is or may be authorized.
>
> (e) "Facilities" means, for purposes of this contract, all property provided under this contract.

Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or this Regulation.

7-702.2 *Facilities To Be Provided.*

FACILITIES TO BE PROVIDED (1964 SEP)

(a) The Contractor, at Government expense and subject to the terms and conditions of this contract, shall acquire, construct, or install the Facilities, and perform the work related thereto, described in the Schedule.

(b) The Government, subject to the terms and conditions of this contract, shall furnish to the Contractor the Facilities identified in the Schedule as Government-furnished Facilities. The Contractor, at Government expense, shall perform such work with respect to these Government-furnished Facilities as may be described in the Schedule.

(End of clause)

7-702.3 *Late Delivery, Diversion, and Substitution.*

LATE DELIVERY, DIVERSION, AND SUBSTITUTION (1964 SEP)

(a) The Government shall not be liable to the Contractor for breach of contract by reason of nondelivery or of any delay in the delivery of the Facilities to be furnished by the Government hereunder.

(b) The Government, if it is determined by the Contracting Officer to be in the best interest of the Government, may divert the Facilities by directing:

(i) delivery of any or all of the Facilities acquired by or furnished to the Contractor hereunder to locations other than those specified in the Schedule; and

(ii) assignment, to the Government or to third parties, of purchase orders or subcontracts of the Contractor for any or all of the Facilities hereunder.

The work performed by the Contractor in complying with such directions shall be at Government expense.

(c) The Government may furnish any item of the Facilities, in lieu of the acquisition or construction thereof by the Contractor. In such event, the work performed by the Contractor in connection with the acquisition or construction of such Facilities, including the cost of terminating purchase orders or subcontracts therefor, shall be at Government expense.

(d) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any nondelivery, delay, diversion, or substitution under this clause.

(End of clause)

7-702.4 *Changes.*

CHANGES (1964 SEP)

(a) The Contracting Officer may at any time, by written order and without notice to the sureties, if any, make changes, within the general scope of this contract, in the Facilities or work described in the Schedule. Work performed by the Contractor in complying with any such order shall be at Government expense. If any such change causes an increase or decrease in the estimated cost of this contract, in the time required for its performance, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in the estimated cost, the completion schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(b) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such change.

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim or adjustment must be asserted may be varied in accordance with Departmental procedures.

7-702.5 *Representations and Warranties.*

REPRESENTATIONS AND WARRANTIES (1964 SEP)

(a) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any item of the Facilities. To the extent practicable, the Contractor shall be afforded an opportunity to inspect all items of Facilities that are to be furnished by the Government prior to the shipment of such Facilities to the Contractor. In the event that any item of such Facilities is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, within thirty (30) days after receipt and installation thereof, notify the Contracting Officer of such fact and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it, or (ii) effect repairs or modifications.

(b) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by the return or disposition, or the repair or modification, of any item of Facilities under paragraph (a) above.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-702.6 *Inspection.*

INSPECTION (1964 SEP)

(a) The Facilities and work called for by this contract shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture. The Contractor shall provide and maintain an inspection system acceptable to the Government covering the Facilities and work called for by this contract. The Government, through any authorized representative, may inspect such Facilities and work at the plant or plants of the Contractor or any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work to be performed by the Contractor under this contract or any related procurement contract.

(b) The Contracting Officer may at any time require the Contractor to remedy by correction or replacement any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract. Except as otherwise provided in paragraph (c) below, such corrections and replacements shall be carried out at Government expense if under the terms of this contract the Facilities or work thus corrected or replaced were initially provided or required to be performed at Government expense.

(c) The Contracting Officer may at any time require the Contractor, without cost to the Government hereunder or under any of its related procurement contracts or subcontracts, to correct or replace any Facilities or work which are defective or otherwise not in conformity with the requirements of this contract, if such defects or failures are due to:

- (i) fraud, lack of good faith, or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives who has supervision or direction of—
  - (A) all or substantially all of the Contractor's business;
  - (B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
  - (C) a separate and complete major industrial operation in connection with the performance of this contract; or
- (ii) The conduct of one or more individual employees selected or retained by the Contractor after any of the supervisory personnel described in (i) above has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) Corrected or replaced Facilities or work shall be subject to the provisions of this clause in the same manner and to the same extent as Facilities or work originally completed under this contract.

(e) The Contractor shall make his records of all inspection work available to the Government during the performance of this contract and for such longer periods as may be specified in this contract.

(End of clause)

7-702.7 *Excusable Delays.* Insert the clause set forth in 7-203.11, changing "Termination" in the last sentence to "Termination of Work." See 8-708.

7-702.8 *Location of the Facilities.*

LOCATION OF THE FACILITIES (1964 SEP)

The Contractor may use the Facilities at any of the locations specified in the Schedule, and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as he may deem necessary for the protection of the Government's interest in the Facilities involved. Notwithstanding any inconsistency with the provisions of this contract, such terms and conditions shall prevail.

(End of clause)

7-702.9 *Government Bills of Lading.*

GOVERNMENT BILLS OF LADING (1964 SEP)

All shipments of the Facilities shall be made on Government bills of lading, unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by, and the Contractor shall be accountable therefor to, the transportation activity designated by the Contracting Officer.

(End of clause)

7-702.10 *Allowable Cost and Payment.*

(a) Subject to the instructions set forth in (b) below, insert the following clause.

ALLOWABLE COST AND PAYMENT (1978 AUG)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Section XV, Part 5, of the Armed Services Procurement Regulation in effect as of the date of this contract; and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

(c) Once each month (or at more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(d) Notwithstanding the provisions of paragraph (k) below, allowable indirect costs under this contract shall be obtained by applying overhead rate(s) established in accordance with paragraphs (e) and (f) below.

(e) Final annual overhead rates and the appropriate bases shall be established by procurement or audit determination in accordance with the procedures of Section III, Part 7, of ASPR in effect for the period covered by the proposal.

(f) The Contractor shall, within ninety (90) days after the expiration of each of its fiscal years for estimating, accumulating, and reporting contract costs, or some later date if approved by the Contracting Officer, submit to the Contracting Officer and to the cognizant audit activity, a proposed final overhead rate(s) for that period based on the Contractor's actual cost experience during that period, together with supporting cost data specifying the contract(s) and/or subcontract(s) to which such rate(s) apply. Establishment of final annual overhead rate(s) shall be undertaken as promptly as practicable after receipt of the Contractor's proposal. The Contractor shall submit an executed *Certificate of Current Cost or Pricing Data* applicable to data furnished in connection with establishment of any final annual overhead rate(s).

(g) Final annual overhead rate(s) shall be set forth in a written overhead rate understanding executed by the Contractor and the appropriate Government representative. Such understanding is automatically incorporated in this contract upon execution and shall specify (i) the agreed upon final annual overhead rate(s), (ii) the base(s) to which the rate(s) apply, (iii) the periods for which the rate(s) apply, (iv) any specific overhead items treated as direct costs in the settlement, and (v) the affected contract(s) and/or subcontract(s), identifying any with advance agreements or special provisions and the rate(s) applicable thereto. The overhead rate understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(h) Pending establishment of final annual overhead rate(s) for any period, the Contractor shall be reimbursed at billing rate(s) established by the Contracting Officer or the auditor, subject to appropriate adjustment when final rate(s) for that period are established. Anticipated final annual rates will be used for billing rates. However, to prevent substantial over or under payment, billing rate(s) may at the request of either party, be revised by mutual agreement, either retroactively or prospectively.

(i) Notwithstanding any other provisions of this clause, the quick closeout procedures set forth in Section III, Part 7, of ASPR in effect on the date of this contract, may be used when mutually agreeable to the Contractor and the Contracting Officer.

(j) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of paragraph (k) below, make payment thereof as approved by the Contracting Officer.

(k) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(L) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable cost hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(i) an assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(A) specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; *provided*, that such claims are not known to the Contractor on the date of the execution of the release; and *provided further*, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(C) claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(m) Any failure by the parties to agree on a final overhead rate under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "*Disputes*" clause of this contract.

(End of clause)

(b) In paragraph (L)(ii)(B) of the foregoing clause, the period of years may be increased to correspond with any statutory period of limitation applicable to claims of third parties against the contractor; *provided*, that a corresponding increase is made in the period for retention of records required in paragraph (a)(4) of the clause prescribed by 7-702.13.

7-702.11 *Limitation of Cost.*

LIMITATION OF COST (1964 SEP)

(a) It is estimated that the total cost to the Government for the performance of work under this contract which is provided herein to be at Government expense will not exceed the estimated cost set forth in the Schedule, and the Contractor agrees to use his best efforts to perform such work within such estimated cost. If at any time the Contractor has reason to believe that the costs which he expects to incur in the performance of such work in the next succeeding thirty (30) days, when added to all costs previously incurred, will exceed eighty-five percent (85%) of the estimated cost then set forth in the Schedule, or if at any time the Contractor has reason to believe that the total cost to the Government for the performance of such work will be substantially greater or less than the then estimated cost thereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving his revised estimate of such total cost for the performance of such work.

(b) The Government shall not be obligated to reimburse the Contractor under this contract for costs incurred in excess of the estimated cost set forth in the Schedule, and the Contractor shall not be obligated to continue the performance of work under this contract which is provided herein to be at Government expense, or to incur costs therefor, in excess of the estimated cost set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performing such work. When and to the extent that the estimated cost set forth in the Schedule has been increased, any costs incurred by the Contractor in excess of such estimated cost prior to the increase in estimated cost shall be allowable to the same extent as if such costs had been incurred after such increase in estimated cost.

(End of clause)

7-702.12 *Use and Charges.* If the authority in this clause to waive or reduce charges for the use of Government property is to be exercised for work for foreign governments, approval by the Director, Defense Security Assistance Agency is required in accordance with 13-406(d).

USE AND CHARGES (1979 MAR)

(a) The Contractor may use the Facilities without charge in the performance of:

(i) prime contracts with the Government which specifically authorize use without charge.

(ii) subcontracts held by the Contractor under Government prime contracts or subcontracts of any tier thereunder if the Contracting Officer having cognizance of the prime contract concerned has authorized use without charge by approving a subcontract specifically authorizing such use or has otherwise authorized such use in writing, and

(iii) other work with respect to which the Contracting Officer has authorized use without charge in writing.

(b) Subject to the payment of a rental therefor, the Contractor may use all or part of the Facilities in the performance of work other than that specified in paragraph (a) above, as authorized in writing by the Contracting Officer or as specifically provided in the Schedule. Use so authorized shall not be construed to constitute a waiver of any rights the Government may have under this contract to terminate the Contractor's right to use all or any part of the Facilities. The amount of rental to be paid for the right to use the Facilities under this paragraph (b) shall be determined in accordance with the following procedures.

(1) The following bases are or shall be established in writing for the rental computation prescribed in subparagraph (2) below in advance of any use of the Facilities under this paragraph.

(i) The rental rates for the right to use the Facilities shall be those set forth in the Attachment.

(ii) The acquisition cost of the Facilities shall be the total cost to the Government, as determined by the Contracting Officer of each item of the Facilities, including the cost of transportation and installation, if such costs are borne by the Government. When Government-owned special tooling or accessories are rented with any item of the Facilities, the acquisition cost shall be increased to include the price charged the Government for such tooling or accessories. When any item of the Facilities has been modernized by substantial rebuilding at Government expense so as to enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer, that such rebuilding and modernization represent. The determination made by the Contracting Officer under this subparagraph shall be final.

(iii) For the purpose of determining the amount of rental due under subparagraph (2) below, the rental period shall be not less than one month nor more than six months, as approved by the Contracting Officer.

(iv) For the purpose of computing any credit under subparagraph (2) below, the measurement unit for determining the amount of use of the Facilities by the Contractor shall be direct labor hours, sales, hours of use, or any other measurement unit which will result in an equitable apportionment of the rental charge, as approved by the Contracting Officer.

(2) The Contractor shall compute the amount of rentals to be paid for each rental period, using the bases established pursuant to subparagraph (1) above. The rental rates shall be applied to the acquisition cost of such of the Facilities as may have been authorized for use in advance pursuant to this paragraph (b), for each rental period. The full charge for each rental period, so determined, shall be reduced by a credit in the amount of such rental as would otherwise be properly allocable to work with respect to which the use of the Facilities without charge is authorized in accordance with paragraph (a) above. Such credit shall be computed by multiplying the full rental for the rental period by a fraction whose numerator is the amount of use of the Facilities by the Contractor without charge during such period, and whose denominator is the total amount of use of the Facilities by the Contractor during such period.

(3) The Contractor shall submit to the Contracting Officer within ninety (90) days after the close of each rental period a written statement of the use made of the Facilities by the Contractor and the rental due the Government hereunder, and shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(4) If the Contractor fails to submit the statement within the prescribed ninety (90) day period, the Contractor shall be liable for the full rental for the period in question, subject to the exception stated in subparagraph (5) below.

(5) If the Contractor's failure to submit the statement within the prescribed ninety (90) day period arose out of causes beyond the control and without the fault or negligence of the Contrac-

tor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time in which to make such submission.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the Facilities to the performance of contracts and subcontracts of the Department of the .... and shall not undertake any work involving the use of the Facilities which would interfere with the performance of existing Government contracts or subcontracts.

(d) Concurrently with the submission of the written statement prescribed by paragraph (b)(3) above, the Contractor shall pay the rental due the Government under this clause by check made payable to the office designated for contract administration. Each check shall be mailed or delivered to the Contracting Officer.* Receipt and acceptance by the Government of the Contractor's checks pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder unless the Contractor is notified in writing within one hundred eighty (180) days following such receipt that the amount received is not regarded by the Government as the final amount due.

*In contracts of the Department of the Navy, insert "Navy Regional Finance Center, Washington, D.C." in lieu of "the Contracting Officer."

(e) If the Contractor uses any item of the Facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part thereof in which such unauthorized use occurs *provided however*, that the Secretary concerned may, in writing, waive the Contractor's liability for such unauthorized use if he determines that circumstances amounting to gross inequity justify the waiver. The acceptance of any rental by the Government hereunder shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the Facilities or any other failure to perform this contract according to its terms.

ATTACHMENT
Rental Rates

The following rental rates are the rental rates referred to in the clause of this contract entitled "Use and Charges:"

(i) For land and land preparation, buildings, building installations, and land installations other than those items specified in (ii) below, a fair and reasonable rental shall be established, based on sound commercial practice.

(ii) For industrial plant equipment of the types covered by the following Federal Supply Classes:

Federal Supply Classes	*Description*
3405, 3408, 3410, 3411 through 3419	Machine Tools
3441 through 3449	Secondary Metalforming and Cutting Machines

The following rates shall apply:

Age of Equipment	*Monthly Rental Rate*
0 to 2	3%
Over 2 to 3 years	2%
Over 3 to 6 years	1.5%
Over 6 to 10 years	1.0%
Over 10 years	.75%

The age of each item of the Facilities shall be based on the year in which it was manufactured, with an annual birthday on 1 January of each year thereafter. On 1 January following the date of manufacture, the item shall be considered one year old; and on each succeeding January 1st, it shall become one year older. For example, if an item of equipment is manufactured on 15 July 1958, it will be considered to be one year old on 1 January 1959, two years old on 1 January 1960, three years old on 1 January 1961, and so forth. The item of equipment will be considered "over two years old" on and after 1 January 1960, "over six years old" on and after 1 January 1964, and "over ten years old" on and after 1 January 1968.

(iii) For personal property and equipment not covered in (i) or (ii) above, a rental shall be established at not less than the prevailing commercial rate, if any; or, in the absence of such rate, not less than two percent (2%) per month for electronic test equipment and automotive equipment; and not less than one percent (1%) per month for all other property and equipment.

(End of clause)

7-702.13 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-702.14 *Maintenance.*

MAINTENANCE (1964 SEP)

(a) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the Facilities in accordance with sound industrial practice, including protection, preservation, maintenance, and repair of the Facilities, and with respect to equipment, normal parts replacement.

(b) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer in writing a proposed normal maintenance program, including an appropriate maintenance records system, in sufficient detail to show its adequacy as a normal maintenance program. To the extent that the Contracting Officer and the Contractor agree upon such a program, it shall become the normal maintenance obligation of the Contractor; and the Contractor shall carry it out in satisfaction of (i) his normal maintenance obligation under paragraph (a) above, and (ii) his obligation to maintain records under paragraph (e) below.

(c) The Contracting Officer may at any time specify, by written notice to the Contractor, a reduction in the work required by the then current normal maintenance obligation of the Contractor. After receipt of such notice, the Contractor shall perform only such work as is specified therein. If any such notice causes a decrease in the cost of performing the normal maintenance obligation, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such decrease.

(d) The Contractor shall perform such maintenance work as may be directed by the Contracting Officer in writing. To the extent that such work is in excess of the Contractor's then current normal maintenance obligation under paragraphs (a) through (c) above, such work shall be at Government expense. The Contractor shall notify the Contracting Officer in writing whenever, in accordance with sound industrial practice, the Facilities require any work in excess of such normal maintenance obligation.

(e) The Contractor shall keep records of the work done on the Facilities in performing his obligations under this clause, and shall afford the Government adequate opportunity to inspect all such records. The Contractor shall deliver such records to the Government or third persons, if so directed by the Contracting Officer, whenever the Facilities to which they relate are disposed of hereunder.

(f) The Contractor's obligation under this clause shall continue, with respect to each item of the Facilities, until such item is removed, abandoned, or otherwise disposed of, until expiration of the ninety (90) day period prescribed in paragraph (c) of the "Disposition of the Facilities" clause, or until the Contractor has discharged his obligations under this contract with respect to such items, whichever last occurs.

(End of clause)

7-702.15 *Title.*

TITLE (SEP 1964)

(a) Title to all Facilities and components furnished by the Government shall remain in the Government. Title to all Facilities and components purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to replacement parts furnished by the Contractor in carrying out his normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract; or (ii) commencement of processing or use of such property in the performance of this contract; or (iii) reimbursement of the cost thereof by the Government, whichever first occurs.

(b) Title to the Facilities shall not be affected by their incorporation in or attachment to any property not owned by the Government, nor shall any item of the Facilities be or become a fixture or lose its identity as personalty by reason of affixation to any realty. The Contractor shall keep the Facilities free and clear of all liens and encumbrances, and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the Facilities.

(c) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange on premises furnished by the Government hereunder, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it is affixed to realty owned by the Government, unless it is so permanently attached to such realty as to be non-removable without substantial injury, as determined by the Contracting Officer, to the property of the Government.

(End of clause)

7-702.16 *Access.*

ACCESS (1964 SEP)

The Government and any persons designated by it shall at all reasonable times have access to the premises where any of the Facilities are located.

(End of clause)

7-702.17 *Property Control.*

PROPERTY CONTROL (1969 APR)

The Contractor shall maintain adequate property control procedures and records, and a system of identification of the Facilities, in accordance with the provisions of Appendix B, "Control of Government Property in Possession of Contractors," or Appendix C, "Control of Government Property in Possession of Nonprofit Research and Development Contractors," of the Armed Services Procurement Regulation, as may be appropriate, in effect on the date of this contract.

(End of clause)

7-702.18 *Liability for the Facilities.*

LIABILITY FOR THE FACILITIES (1976 OCT) |

(a) The Contractor shall not be liable for any loss of or damage to the Facilities, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from:

(i) willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of:

(A) all or substantially all of the Contractor's business; or

(B) all or substantially all of the Contractor's operations at any one plant or separate location, in which the Facilities are installed or located; or

(C) a separate and complete major industrial operation in connection with which the Facilities are used;

(ii) a failure, on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above:

(A) to maintain and administer, in accordance with the clause of the contract entitled "Maintenance", a program for maintenance, repair, protection, and preservation of the Facilities, or to take all reasonable steps to comply with any appropriate written directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of the Facilities;

(B) to establish, maintain and administer, in accordance with the clause of the contract entitled "Property Control", a system for control of the Facilities.

Any failure of the Contractor to act as provided in (A) or (B) above shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss of or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

(iii) a risk for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;

(iv) a risk expressly required to be insured pursuant to paragraph (c) of this clause, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

provided that, if more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception.

(b) If the Contractor transfers the Facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the Facilities as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the Facilities while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the Facilities in as good condition as when received, except for reasonable wear and tear or for the utilization of the Facilities in accordance with the provisions of the prime contract.

(c) Unless expressly directed in writing by the Contracting Officer*, the Contractor shall not include as an element of price or cost under any contract with the Government any amount on account of the cost of insurance (including self-insurance) against any form of loss or damage to the Facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances, if so approved) as the Contracting Officer* shall require or approve. Such insurance shall contain provision for thirty (30) days prior notice to the Contracting Officer*, in the event of cancellation or material change in the policy coverage on the part of the insurer. A certificate of insurance or a certified copy of each policy of insurance taken out hereunder shall be deposited promptly with said Contracting Officer*. The Contractor shall, not less than thirty (30) days prior to the expiration of any insurance required by this contract to be carried by the Contractor on the Facilities, deliver to said Contracting Officer* a certificate of insurance or a certified copy of each renewal policy to cover the same risks. The insurance shall be in the name of the United States of America (Department of the ....), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

Footnote for preceding paragraph:

*In contracts of the Department of the Navy, insert "the Insurance Branch, Chief of Naval Material, Department of the Navy, Washington, D. C." in lieu of "Contracting Officer."

"Loss, if any, under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated for contract administration.

(d) Upon the happening of any loss or destruction of or any damage to the Facilities:

(i) the Contractor shall promptly notify the Contracting Officer thereof, and with the assistance of the Contracting Officer shall take all reasonable steps to protect the Facilities from further damage, separate the damaged and undamaged Facilities, put all the Facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within thirty (30) days after the Contractor has determined that loss or destruction of, or damage to, the Facilities has occurred) a statement of:

(A) the lost, destroyed, and damaged Facilities;
(B) the time and origin of the loss, destruction, or damage;
(C) all known interests in commingled property of which the Facilities are a part; and
(D) the insurance, if any, covering any part of or interest in such commingled property; and

(ii) the Contractor shall make such repairs, replacements, and renovations of the lost, destroyed, or damaged Facilities, or take such other action as the Contracting Officer may direct in writing.

The Contractor shall perform its obligations under this paragraph (d) at Government expense, except to the extent that the Contractor is responsible for such damage, loss, or destruction under the terms of this clause, and except as any damage, loss, or destruction is compensated by insurance.

(e) The Government is not obliged to replace or repair the Facilities which have been lost, destroyed, or damaged. In such event the right of the parties to an equitable adjustment in delivery or performance dates, or price, or both, and in any other contractual condition of the related procurement contracts affected thereby shall be governed by the terms and conditions of such contracts.

(f) Except to the extent of any loss or destruction of or damage to the Facilities for which the Contractor is relieved of liability, the Facilities shall be returned to the Government or otherwise disposed of under the terms of this contract in as good condition as when received by the Contractor, as subsequently improved or as they should have been subsequently improved under the terms of this contract, less ordinary wear and tear.

(g) In the event the Contractor is indemnified, reimbursed, or otherwise compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the Facilities, he, to the extent and as directed by the Contracting Officer:

(i) shall use the proceeds to repair, renovate, or replace the Facilities involved; or
(ii) pay such proceeds to the Government.

(h) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the Facilities, and upon the request of the Contracting Officer shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(End of clause)

7-702.19 *Insurance—Liability to Third Persons.* Insert the clause in 7-203.22, except as otherwise provided in 7-402.26 when the contractor claims partial or total immunity from tort liability as a state agency or as a charitable institution. Wherever reference to the clause entitled "Allowable Cost, Fixed Fee and Payment" is made in this clause, insert in lieu thereof the following: "Allowable Cost and Payment". Wherever the phrase "performance under this contract" or "the performance of this contract" appears in such clause, insert in lieu thereof the following: "performance of work at Government expense under this contract."

7-702.20 *Indemnification of the Government.*

INDEMNIFICATION OF THE GOVERNMENT (1964 SEP)

Except as provided in the "Insurance—Liability to Third Persons" clause, the Contractor shall indemnify and hold the Government harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the Facilities. However, the provisions of the Contractor's related procurement contracts shall govern the Government's assumption of liability for such claims arising out of or related to the performance of each such related procurement contract and involving the possession or use of the Facilities.

(End of clause)

7-702.21 *Stop Work Orders.*

STOP WORK ORDERS (1964 SEP)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by the Schedule for a period of ninety (90)* days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall, at Government expense, forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90)* days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

(i) cancel the Stop Work Order, or

(ii) terminate the work covered by such order as provided in the "Termination of Work" clause of this contract.

(b) If a Stop Work Order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery completion schedule, the estimated cost, or both, and the contract shall be modified in writing accordingly, if:

(i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(ii) the Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; *provided* that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

(c) If a Stop Work Order is not canceled and the work covered by such order is terminated, the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement.

(d) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any Stop Work Order under this clause. In no event shall the Government be liable to the Contractor for damages or loss of profits because of a Stop Work Order issued under this clause.

(End of clause)

* This clause may provide for less than ninety days.

7-702.22 *Termination of Work.*

TERMINATION OF WORK (1973 APR)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

- (i) stop work in performance of the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services, or Facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;
- (vi) transferred title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government:
  - (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect to the performance of, the work terminated by the Notice of Termination; and
  - (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government;
- (vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor:
  - (A) shall not be required to extend credit to any purchaser, and
  - (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;
- (viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of Contractor in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining any item of reimbursable cost under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, in effect as of the date of this contract, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter the Government will accept such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c) the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows.

(i) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer; *provided*, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(ii) there shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract; and

(iii) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory.

(f) Costs claimed, agreed to, or determined pursuant to (c), (d) and (e) hereof shall be in accordance with the Section XV Contract Cost Principles and Procedures of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) Appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by a Notice of Termination under this clause. In no event shall the Government be liable to the Contractor for damages or loss of profits by reason of a Notice of Termination issued pursuant to this clause.

(End of clause)

In accordance with E–621, the last sentence of paragraph (i) in the above clause may be deleted in contracts with agencies of the United States Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

7–702.23 *Notice of Use of the Facilities.*

NOTICE OF USE OF THE FACILITIES (1968 JUN)

The Contractor shall notify the Contracting Officer in writing whenever:

(i) Use of all Facilities for Government work, in any quarterly period, is on an average less than 75% of the total use of the Facilities.

(ii) Any item of the Facilities which is no longer needed or usable for purposes of performing existing Government contracts or subcontracts for which use has been authorized.

(End of clause)

7-702.24 *Termination of the Use of the Facilities.*

TERMINATION OF THE USE OF THE FACILITIES (1964 SEP)

(a) The Contractor may at any time, upon written notice to the Contracting Officer, terminate his authority to use any or all of the Facilities. Termination under this paragraph (a) shall not relieve the Contractor of any of his obligations or liabilities under any related procurement contract or subcontract affected thereby.

(b) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any or all of the Facilities. Except as otherwise provided in the "Failure to Perform" clause of this contract, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such notice.

(End of clause)

7-702.25 *Period of This Contract.*

PERIOD OF THIS CONTRACT (1964 SEP)

If not previously terminated pursuant to the "Termination of the Use of the Facilities" clause of this contract, the use of the Facilities authorized under this contract shall terminate five (5) years after its effective date. Thereafter, if continued use of the Facilities by the Contractor is mutually desired, the parties shall enter into a new contract which shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the Facilities hereunder beyond this five (5) year period to permit the completion of then existing related procurement contracts and subcontracts.

(End of clause)

A period of more than five years may be specified when authorized by the Secretary of the Department concerned or his designee, not lower than the Head of a Procuring Activity. A period of less than five years may be specified when appropriate.

7-702.26 *Disposition of the Facilities.*

DISPOSITION OF THE FACILITIES (APR 1968)

(a) Except as the Contracting Officer otherwise directs, or until use of all the Facilities under this contract is terminated, the provisions of this clause shall not be applicable to those Facilities, the use of which has been terminated by the Contractor by a notice of termination under paragraph (a) of the "Termination of the Use of the Facilities" clause of this contract if:

- (i) such Facilities comprise less than all of the Facilities in the possession of the Contractor, and
- (ii) the Contracting Officer determines that continued retention of such Facilities would not interfere with the Contractor's operations.

(b) Within sixty (60) days after the effective date of any notice of termination given pursuant to the "Termination of the Use of the Facilities" clause of this contract, or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in form satisfactory to him, an accounting for all the Facilities covered by such notice.

(c) Within ninety (90) days after the Contractor accounts for any Facilities pursuant to paragraph (b) above, the Contracting Officer shall give written notice to the Contractor as to the disposition thereof, except as otherwise provided in paragraph (e) below. In effecting such disposition, the Government may either:

- (i) abandon any such Facilities in place, and thereupon all obligations of the Government regarding such abandoned Facilities and the restoration or rehabilitation of the premises in and on which they are located shall cease; or
- (ii) require the Contractor to comply, at Government expense, with such written directions as the Contracting Officer may give with respect to:
  - (A) the preparation, protection, removal, or shipment of the affected Facilities;

(B) the retention or storage of the affected Facilities, *provided*, that the Contracting Officer will not direct the Contractor to retain or store any items of Facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) the restoration of Government-owned land or buildings incident to the removal therefrom of Government-owned Facilities; and

(D) the sale of any affected Facilities in such manner, at such times, and at such price or prices, as may be approved by the Contracting Officer, except that the Contractor shall not be required to extend credit to any purchaser.

(d) If the Contracting Officer fails to give the written notice required by paragraph (c) above within the prescribed ninety (90) day period, or within thirty (30) days after notice as hereinafter provided, the Contractor may, upon not less than thirty (30) days' written notice to the Government and at Government risk and expense, (i) retain the Facilities in place or (ii) remove any of the affected severable Facilities located in Contractor-owned buildings or property and store them elsewhere, at Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification, if any. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (c) above.

(e) Nonseverable items of the Facilities or items of the Facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(f) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any Facilities with respect to which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (e) above.

(g) The Contractor shall, within a reasonable time after the expiration of the ninety (90) day period specified in paragraph (c) above, remove all property owned by him from land or buildings owned or acquired by the Government and take such action as the Contracting Officer may direct in writing with respect to restoring such land or buildings, insofar as they are affected by the installation therein of the Contractor's property, to their condition prior to such installation.

(h) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at Contractor's plant, except for restoration or rehabilitation costs caused by removal of the Facilities pursuant to paragraph (c)(ii) above. The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any such damage as may be occasioned by the negligence of the Government, its agents, or independent contractors.

(End of clause)

7–702.27 *Failure to Perform.*

FAILURE TO PERFORM (1964 SEP)

(a) Subject to the provisions of the clause hereof entitled "Excusable Delays", if the Contractor shall fail to perform this contract in accordance with its terms, the Contracting Officer shall give the Contractor written notice thereof. Thereafter, notwithstanding any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related procurement contract, to the extent that such equitable adjustment arises out of the Contractor's failure to perform or such reasonable remedial action as may be taken by the Contracting Officer predicated upon such failure.

(b) The failure of the Government to insist, in any one or more instances, upon the performance of any term or terms of this contract shall not be construed as a waiver or relinquishment of the Government's right to future performance of such term or terms, and the Contractor's obligation in respect to such future performance shall continue in full force and effect.

(c) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

7-702.28 *Disputes.* Insert the clause in 7-103.12.

7-702.29 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, deleting paragraphs (c) and (d), and substituting the following paragraphs (c) and (d).

> (c) If, subsequent to the date of this contract, the security classifications or security requirements under this contract are changed by the Government as provided in this clause, and if such change causes an increase or decrease in the estimated cost of performance of this contract, the estimated cost, to the extent appropriate, shall be subject to an equitable adjustment. Any such equitable adjustment shall be accomplished in the manner set forth in the "Changes" clause in this contract.
>
> (d) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified information, provisions which shall conform substantially to the language of this clause, including this paragraph (d) but excluding (c) of this clause. The Contractor may insert in any such subcontract, and any such subcontract entered into may contain, in lieu of paragraph (c) of this clause, provisions which permit equitable adjustments to be made in the subcontract price or in the estimated cost and fixed fee of the subcontract (as appropriate to the type of subcontract involved) on account of changes in security classifications or requirements made under the provisions of this clause subsequent to the date of the subcontract involved. (1973 APR)

7-702.30 *Authorizaton and Consent.* In accordance with 9-102, insert the clause in 7-103.22 or 7-302.21.

7-702.31 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-702.32 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-702.33 *Subcontracts.* Insert the clause in 7-203.8 except that paragraph (a) shall be appropriately modified to delete references to facilities and special tooling.

7-702.34 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-702.35 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3(a), insert the clause in 7-104.20(a).

7-702.36 *Buy American Act.* In accordance with 7-104.3, insert the clause therein. When the contract involves construction work, in accordance with 7-602.20 and 7-602.24 also insert the clauses therein.

7-702.37 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-702.38 *Renegotiation.* In accordance with 7-103.13, insert the appropriate clause therein.

7-702.39 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-702.40 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-702.41 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-702.42 *Payment for Overtime Premiums.* In accordance with 12-102.4, insert the clause in 7-203.27.

7-702.43 *Convict Labor.* In accordance with 12-202 and 12-203, insert the clause in 7-104.17.

7-702.44 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-702.45 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-702.46 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-702.47 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-702.48 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein as amended by 7-104.41(b).

7-702.49 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-702.50 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-702.51 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-702.52 *Reserved.*

7-702.53 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-702.54 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-702.55 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-702.56 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-703 Required Clauses for Facilities Acquisition Contracts. The following contract clauses shall be inserted in all facilities acquisition contracts.

7-703.1 *Definitions.* Insert the clause required by 7-702.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7-703.2 *Facilities To Be Provided.* Insert the clause in 7-702.2.

7-703.3 *Late Delivery, Diversion, and Substitution.* Insert the clause in 7-702.3.

7-703.4 *Changes.* Insert the clause in 7-702.4.

7-703.5 *Representations and Warranties.* Insert the clause in 7-702.5.

7-703.6 *Inspection.* In accordance with 8-708, insert the clause in 7-702.6.

7-703.7 *Excusable Delays.* Insert the clause in 7-203.11, changing "Termination" in the last sentence to "Termination of Work."

7-703.8 *Government Bills of Lading.* Insert the clause in 7-702.9.

7-703.9 *Allowable Cost and Payment.*

(a) In accordance with 7-702.10, insert the clause therein.

(b) If desired, the following additional provision may be added after the first sentence of paragraph (j) of this clause.

> After payment of an amount equal to eighty percent (80%) of the total estimated cost of performance of this contract set forth in the Schedule, further payment on account of allowable cost shall be withheld until a reserve of either one percent (1%) of such total estimated cost, or one hundred thousand dollars ($100,000) whichever is less, shall have been set aside.

(c) If desired, the following additional paragraph may be added to this clause as paragraph (L), in which case paragraphs (L), and (m) of the clause in 7-702.10 shall be redesignated paragraphs (m) and (n).

> (L) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all relevant provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (m) below) the Government shall promptly pay to the Contractor any balance of allowable cost. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of (i) all work under this contract, or (ii) such work involving acquisition, construction, or installation of the Facilities as may then be specified in the Schedule, but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

7-703.10 *Limitation of Cost.* Insert the clause in 7-702.11.

7-703.11 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-703.12 *Title.* Insert the clause in 7-702.15, except that the third sentence of paragraph (a) shall be deleted.

7-703.13 *Access.* Insert the clause in 7-702.16.

7-703.14 *Liability for the Facilities.* Insert the clause in 7-702.18, except that the phrase "in accordance with the clause of the contract entitled 'Maintenance'," in paragraph (a)(ii) shall be deleted, and the phrase "in accordance with sound industrial practice" inserted in lieu thereof.

7-703.15 *Insurance—Liability to Third Persons.* In accordance with 7-702.19, insert the clause in 7-203.22, except as otherwise provided in 7-402.26 when the contractor claims partial or total immunity from tort liability as a state agency or as a charitable institution.

7-703.16 *Indemnification of the Government.* Insert the clause in 7-702.20.

7-703.17 *Stop Work Orders.* Insert the clause in 7-702.21.

7-703.18 *Termination of Work.* In accordance with 7-702.22, insert the contract clause therein.

7-703.19 *Failure To Perform.* Insert the clause in 7-702.27.

7-703.20 *Disputes.* Insert the appropriate clause in 7-103.12.

7-703.21 *Military Security Requirements.* In accordance with 7-702.29, insert the clause called for therein.

7-703.22 *Authorization and Consent.* In accordance with 9-102, insert the clause in 7-103.22 or 7-302.21.

7-703.23 *Notice and Assistance Regarding Patent and Copyright Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-703.24 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-703.25 *Subcontracts.* Insert the clause in 7-203.8, except that paragraph (a) shall be appropriately modified to delete references to facilities and special tooling.

7-703.26 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-703.27 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3(a), insert the clause in 7-104.20(a).

7-703.28 *Buy American Act.* In accordance with 7-104.3, insert the clause therein. When the contract involves construction work, in accordance with 7-602.20 and 7-602.24 also insert the clauses therein.

7-703.29 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-703.30 *Renegotiation.* In accordance with 7-103.13, insert the appropriate clause therein.

7-703.31 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-703.32 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-703.33 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-703.34 *Payment for Overtime Premiums.* In accordance with 12-102.4, insert the clause in 7-203.27.

7-703.35 *Convict Labor.* In accordance with 12-202, insert the clause in 7-104.17.

7-703.36 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18. |

7-703.37 *Walsh-Healey Public Contracts Act.* In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-703.38 *Contract Work Hours and Safety Standards Act — Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-703.39 *Supersedure.*

SUPERSEDURE (1964 SEP)

When the acquisition, construction, or installation of the Facilities called for by this contract, or any useable increment thereof, is completed and accepted by the Government, such facilities shall thereafter be subject to the provisions of the related facilities contract by which the use of such items by the Contractor is authorized.

(End of clause)

7-703.40 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-703.41 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein as amended by 7-104.41(b).

7-703.42 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-703.43 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-703.44 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause.

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-703.45 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-703.46 Reserved.

7-703.47 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-703.48 *Property Control.* Insert the clause in 7-702.17.

7-703.49 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-703.50 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-703.51 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-704 Required Clauses for Facilities Use Contracts. The following clauses shall be inserted in all facilities use contracts except that the clauses in 7-706 may be used in facilities use contracts with nonprofit educational institutions.

7-704.1 *Definitions.* Insert the clause required by 7-702.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7-704.2 *Use and Charges.* Insert the clause in 7-702.12.

7-704.3 *Allowable Cost and Payment.*

ALLOWABLE COST AND PAYMENT (1965 JUL)

(a) For the performance of any work, duty, or obligation by the Contractor under this contract, which is provided herein to be at Government expense, the Government shall pay the Contractor the cost thereof, determined by the Contracting Officer to be allowable in accordance with (i) Section XV, Part 5, of the Armed Services Procurement Regulation as in effect on the date of this contract, and (ii) the terms of this contract.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

(End of clause)

7-704.4 *Limitation of Cost.* Insert the clause in 7-702.11.

7-704.5 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-704.6 *Location of the Facilities.* Insert the clause in 7-702.8.

7-704.7 *Maintenance.* Insert the clause in 7-702.14.

7-704.8 *Inspection.* Insert the clause in 7-702.6.

7-704.9 *Title.* Insert the clause in 7-702.15, except that the following paragraph (a) shall be substituted for the corresponding paragraph in that clause:

(a) Title to the Facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations pursuant to the clause of this contract entitled "Maintenance" shall pass to and vest in the Government upon completion of their installation in the Facilities.

7-704.10 *Access.* Insert the clause in 7-702.16.

7-704.11 *Property Control.* Insert the clause in 7-702.17.

7-704.12 *Representations and Warranties.* Insert the clause in 7-702.5.

7-704.13 *Government Bills of Lading.* Insert the clause in 7-702.9.

7-704.14 *Liability for the Facilities.* Insert the clause in 7-702.18.

7-704.15 *Indemnification of the Government.* Insert the clause in 7-702.20, deleting the phrase "Except as provided in the 'Insurance— Liability to Third Persons' clause" in the first sentence.

7-704.16 *Notice of Use of the Facilities.* Insert the clause in 7-702.23.

7-704.17 *Termination of the Use of the Facilities.* Insert the clause in 7-702.24.

7-704.18 *Period of This Contract.* Insert the clause in 7-702.25.

7-704.19 *Disposition of the Facilities.* Insert the clause in 7-702.26.

7-704.20 *Failure To Perform.* Insert the clause in 7-702.27, except that the phrase "Subject to the provisions of the clause hereof entitled 'Excusable Delays'," shall be deleted in paragraph (a).

7-704.21 *Disputes.* Insert the clause in 7-103.12.

7-704.22 *Military Security Requirements.* In accordance with 7-702.29, insert the clause called for therein except that "ASPR 7-702.4" shall be substituted for "this contract" in the second sentence of paragraph (c).

7-704.23 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-704.24 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-704.25 *Gratuities.* In accordance with 7-104.16, insert the clause therein.

7-704.26 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-704.27 *Payment for Overtime Premiums.* In accordance with 12-102.4, insert the clause in 7-203.27.

7-704.28 *Convict Labor.* In accordance with 12-202 and 12-203, insert the clause in 7-104.17.

7-704.29 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-704.30 *Contract Work Hours and Safety Standards Act — Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-704.31 *Supersedure.*

SUPERSEDURE (1964 SEP)

(a) Facilities heretofore provided to the Contractor pursuant to the contracts specified in the Schedule shall become subject to the terms of this contract upon its effective date. The terms of the contracts by which such Facilities may have been provided to the Contractor are hereby superseded with respect to such Facilities, except for rights and obligations which may have accrued under such other contract prior to the effective date hereof.

(b) Each item of Facilities hereafter provided to the Contractor under any contract which so specifies shall become subject to the terms of this contract upon the completion of its construction, acquisition, and installation, or upon its availability for use, whichever first occurs, except as otherwise provided in the contract or other document by which such Facilities are provided to the Contractor.

(End of clause)

7-704.32 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-704.33 *Audit by Department of Defense.* In accordance with 7-104.41(a), insert the clause therein as amended by 7-104.41(b).

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7-704.34 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-704.35 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-704.36 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-704.37 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-704.38 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-704.39 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-704.40 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-704.41 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-705 Clauses To Be Used When Applicable.

7-705.1 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein. Particular attention shall be given to obtaining data when data are necessary to the use or disposal of facilities.

7-705.2 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-705.3 *Priorities, Allocations, and Allotments.* In accordance with 1-307.2, insert the clause in 7-104.18.

7-705.4 *Transfer of Title to the Facilities.* In accordance with 4-116.4, the following clause may be inserted in facilities contracts.

TRANSFER OF TITLE TO THE FACILITIES (1964 SEP)

Notwithstanding the provisions of the clause of this contract entitled "Title", the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon, *provided*, that the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization, or use of such equipment as is donated under this clause. Upon the transfer of title to equipment under this clause, such equipment shall cease to be Government property.

(End of clause)

7-705.5 *Labor Standards for Construction Work.* Except as provided in 18-703.2 and 18-703.3, insert the clauses in 7-602.23(a) if the contract involves construction as described in 12-106.1 and 18-701. If such construction work may be required but it is not certain, insert the following clause. (See 18-704.2(1) with regard to the Contracting Officer's responsibility for obtaining wage determinations.)

LABOR STANDARDS FOR CONSTRUCTION WORK (1977 DEC)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses.

(i) "Davis-Bacon Act (40 U.S.C. 276a to a7)," 7-602.23(a)(i);

(ii) "Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327-333)," 7-602.23(a)(ii).

(iii) "Apprentices and Trainees," 7-602.23(a)(iii);
(iv) "Payrolls and Basic Records," 7-602.23(a)(iv);
(v) "Compliance With Copeland Regulations," 7-602.23(a)(v);
(vi) "Withholding of Funds" 7-602.23(a)(vi);
(vii) "Subcontracts", 7-602.23(a)(vii);
(viii) "Contract Termination - Debarment", 7-602.23(a)(viii); and
(ix) "Disputes Concerning Labor Standards", 7-602.23(a)(ix).

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates and the clauses referenced in paragraph (a) above shall be incorporated into the contract in their entirety by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination and clauses required in paragraph (b) above unless the Contracting Officer authorizes the start of work because of unusual or emergency situations.

(End of clause)

7-705.6 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-705.7 *Improvements to Buildings or Land Owned by the Government.* When necessary to assure that Government buildings or land will not be modified in a manner detrimental to the interests of the Government, the following clause shall be inserted.

IMPROVEMENTS TO BUILDING OR LAND OWNED BY THE GOVERNMENT (1964 SEP)

(a) The Contractor shall not construct or make, at its expense, any fixed improvement to, or structural alteration in the nature of, buildings or land owned or leased by the Government, without prior written approval of the Contracting Officer.

(b) For the purposes of paragraph (a), the terms "fixed improvement" and "structural alteration" mean any improvement to or alteration in the nature of the buildings or land which, after completion, cannot be removed without substantial loss of value or damage to the premises. Such terms do not include foundations for production equipment.

(End of clause)

7-705.8 *Patent Rights.* In accordance with 9-107, insert the appropriate clause as set forth in 7-302.23.

7-705.9 *Required Source for Jewel Bearings and Related Items.* In accordance with 1-2207.2, insert the clause in 7-104.37.

7-705.10 *Changes to Make-or-Buy Program.* In accordance with 3-902.4, insert the clause in 7-204.20(a).

7-705.11 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-705.12 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7–705.13 *Advance Payments.* In accordance with Appendix E, Part 4, insert the clause in 7–104.34 but substitute paragraphs (3) and (5) from the clause in 7–204.25 for paragraph (3) and (5) of the clause in 7–104.34.

7–705.14 *General Services Administration Supply Sources.* In accordance with 7–204.28, insert the clause therein, deleting the last sentence.

7–705.15 *Order of Precedence.* In accordance with 3–501(b)Sec.C(xxxi), insert the clause in 7–2003.41.

7–705.16 *Duty-Free Entry.* In accordance with 6–603.2 and 6–603.3, insert either or both of the clauses in 7–104.31.

7–705.17 *United States Products and Services (Balance of Payments Program).* In accordance with 6–806.4, insert the clause in 7–2003.53.

7–705.18 *Identification of Expenditures in the United States.* In accordance with 6–807, insert the clause in 7–104.58.

7–705.19 *Reserved.*

7–705.20 *Insurance.* In accordance with 10–405 and 10–501, insert the clause in 7–104.65.

7–705.21 *Use of Excess and Near-Excess Currency.* In accordance with 6–1110, insert the clause in 7–104.66.

7–705.22 *Facilities Equipment Modernization.* Insert the following clause in any bilateral modification of an existing facilities contract, and in any new facilities contract, under which the Government provides modernized or replacement facilities.

FACILITIES EQUIPMENT MODERNIZATION (1976 JUL)

(a) In consideration of the Government providing, as set forth in this contract, for modernization or replacement of Government-owned equipment being used or to be used by the Contractor in the performance of Government firm-fixed-price contracts or subcontracts, or fixed-price contracts or subcontracts with economic price adjustment provisions, the Contractor agrees to return to the Government the net cost savings actually realized from the use of the modernized or replacement equipment on all such contracts or subcontracts entered into prior to the expiration of the three-year period following the date such equipment is placed in production, except (i) formally advertised contracts entered into subsequent to the date such equipment is placed in production, and (ii) contracts or subcontracts which specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for the implementation of this clause. The Contractor shall make such records available at its office for inspection, audit or reproduction by any authorized representative of the Contracting Officer. Within fourteen (14) months after the modernized or replacement equipment has been placed in production, the Contractor shall file with the Administrative Contracting Officer cognizant of the Government production and research property four (4) completed copies of DD Form 1651 (Industrial Equipment Modernization Program—Post Analysis Report).

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, he shall require the subcontractor to maintain records, to make them and additional information available to the Contracting Officer, and to file four (4) copies of DD Form 1651, in the manner prescribed in (1) above.

(c) Records shall generally be acceptable if they are maintained for the equipment under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Administrative Contracting Officer by:

(i) credits to, or adjustment of the prices of, the related contracts, subcontracts, or purchase orders benefiting from the use of the modernized or replacement equipment; or

(ii) payment to the Government through the Contracting Officer having cognizance of the Government production and research property; or

(iii) such other means as may be mutually agreed to.

(End of clause)

7-705.23 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-705.24 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-705.25 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-705.26 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-705.27 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-705.28 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-705.29 *Term of Performance or Delivery Date.* When applicable, a clause in accordance with 7-104.92 may be used.

7-705.30 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-705.31 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-705.32 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-705.33 *Reserved.*

7-705.34 *Geographic Distribution of Defense Subcontract Dollars.* In accordance with 1-340, insert the clause in 7-104.78.

7-705.35 *Reserved.*

7-706 Facilities Use Contracts With Nonprofit Educational Institutions. As an alternative to the clauses in 7-704, the following clauses, in their entirety, may be used in any facilities use contract with nonprofit educational institutions.

7-706.1 *Purpose.*

PURPOSE (1968 SEP)

This Facilities Use Contract is designed specifically for nonprofit educational institutions to set forth provisions for the use and accountability of Government facilities furnished or acquired under related procurement contracts identified elsewhere herein. There are no funds provided under this contract. Costs incurred for acquisition, maintenance, repair or replacement, disposition or for other purposes in connection with the facilities accountable hereunder will be subject to the reimbursement provisions of related procurement contracts; *provided, however*, that should no procurement contract be available for reimbursement of such costs, this contract may be appropriately modified to provide for such reimbursement.

(End of clause)

7-706.2 *Accountable Facilities.*

ACCOUNTABLE FACILITIES (1968 SEP)

The facilities accountable under this contract are identified in the Contractor's property control system and include those facilities furnished or acquired under related procurement contracts issued by the purchasing offices which are specifically named in the Schedule hereto.

(End of clause)

7-706.3 *Definitions.* Insert the clause in 7-103.1, omitting paragraph (c) thereof, and adding the following:

(c) "Related procurement contract" means any Government contract or subcontract thereunder, for the furnishing of supplies or services of any description for the performance of which the use of the facilities is or may be authorized.

(d) "Facilities" means Government property having an acquisition cost of $200 or more. It excludes material and non-severable structures but includes special tooling and special test equipment expected to remain of substantial value for more than one year in its original form, without being expended and without appreciable modification or incorporation into another item of Government property.

Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or this Regulation.

7-706.4 *Use of Government Facilities.*

USE OF GOVERNMENT FACILITIES (1968 SEP)

The Contractor may use the Facilities without charge in the performance of:

(i) prime contracts with the Government which specifically authorize use without charge,

(ii) subcontracts held by the Contractor under Government prime contracts or subcontracts of any tier thereunder if the Contracting Officer having cognizance of the prime contract concerned has authorized use without charge by approving a subcontract specifically authorizing such use or has otherwise authorized such use in writing,

(iii) any Department of Defense contract providing such use does not interfere with the work of the contract for which such facilities are provided, and

(iv) other work with respect to which the Contracting Officer has authorized use without charge in writing.

(End of clause)

7-706.5 *Allowable Costs and Payments.*

ALLOWABLE COSTS AND PAYMENTS (1968 SEP)

Except as otherwise specifically provided in this contract or any related procurement contract, the failure of this contract to provide for reimbursement shall not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred in the performance of any work, duty, or obligation under this contract which are not reimbursable hereunder.

(End of clause)

7-706.6 *Examination of Records by Comptroller General.* Insert the clause in 7-104.15.

7-706.7 *Location of the Facilities.*

LOCATION OF THE FACILITIES (1968 SEP)

The Contractor may use the Facilities at any of the locations approved by the Contracting Officer. In granting this approval, the Contracting Officer may prescribe such terms and conditions as he may deem necessary for the protection of the Government's interest in the Facilities involved. Notwithstanding any inconsistency with the provisions of this contract, such terms and conditions shall prevail.

(End of clause)

7-706.8 *Maintenance*. Insert the clause in 7-702.14.

7-706.9 *Inspection*. Insert the clause in 7-702.6.

7-706.10 *Title*.

TITLE (1969 DEC)

(a) Title to all Facilities furnished by the Government shall remain in the Government. Title to all Facilities purchased by the Contractor, for the cost of which the Contractor is to be reimbursed as a direct item of cost under a related procurement contract, shall pass to and vest in the Government upon delivery of such Facilities by the vendor; *provided*, however, that whenever the Contractor shall have obtained the prior approval of the Contracting Officer for the acquisition of any item of equipment having a unit cost of less than $1,000, title to such equipment shall vest in the Contractor. Title to other Facilities, the cost of which is to be reimbursed to the Contractor under a related procurement contract, shall pass to and vest in the Government upon (i) issuance for use of such Facilities in the performance of a related procurement contract, or (ii) commencement or processing or use of such Facilities in the performance of a related procurement contract, or (iii) reimbursement of the cost thereof by the Government, whichever first occurs. All Government-furnished Facilities, together with all Facilities acquired by the Contractor, title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government Facilities."

(b) Title to the Government Facilities shall not be affected by the incorporation or attachment thereof to any Facilities not owned by the Government, nor shall such Government Facilities, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(c) Notwithstanding the provisions of subparagraph (a) above relative to title, and in accordance with the criteria set forth in ASPR 4-116.4, the Contracting Officer may at any time during the term of this contract, or upon completion or termination, transfer title to equipment to the Contractor upon such terms and conditions as may be agreed upon; *provided*, that the Contractor shall not under any Government contract, or subcontract thereunder, charge for any depreciation, amortization or use of such equipment as is donated under this paragraph. Upon the transfer of title to equipment under this paragraph, such equipment shall cease to be Government property. The Contractor shall furnish the Contracting Officer a list of all such equipment where title is vested in the Contractor within ten (10) days following the end of the calendar quarter in which the transfer of title occurs.

(End of clause)

7-706.11 *Access*. Insert the clause in 7-702.16.

7-706.12 *Property Control*. Insert the clause in 7-702.17.

7-706.13 *Representations and Warranties*. Insert the clause in 7-702.5.

7-706.14 *Liability for the Facilities*. Insert the clause in 7-702.18.

7-706.15 *Termination of the Use of the Facilities*.

TERMINATION OF THE USE OF THE FACILITIES (1968 SEP)

(a) Subject to the provisions of the clause of this contract entitled, "Disposition of the Facilities", the Contractor may at any time, upon written notice to the Contracting Officer, terminate his authority to use any or all of the Facilities. Termination under this paragraph (a) shall not relieve the Contractor of any of his obligations or liabilities under any related procurement contract or subcontract affected thereby.

(b) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any or all of the Facilities. Except as may otherwise be provided in this contract or any related procurement contract, appropriate equitable adjustment may be made in any related procurement contract of the Contractor which so provides and which is affected by any such notice.

(c) Upon completion of the related procurement contract, or at any time during the life of the related procurement contract when the facilities are no longer required, it is the responsibility of the Contractor to notify the Contracting Officer in order that appropriate disposal may be made.

(End of clause)

7-706.16 *Period of This Contract.* Insert the clause in 7-702.25.

7-706.17 *Disposition of the Facilities.* Insert the clause in 7-702.26.

7-706.18 *Disputes.* Insert the clause in 7-103.12.

7-706.19 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-706.20 *Gratuities.* In accordance with 7-104.16 insert the clause therein.

7-706.21 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-706.22 *Convict Labor.* In accordance with 12-202 and 12-203, insert the clause in 7-104.17.

7-706.23 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-706.24 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302 and 12-306, insert the appropriate clause(s) in 7-103.16.

7-706.25 *Supersedure.*

SUPERSEDURE (1968 SEP)

(a) Facilities heretofore provided to the Contractor pursuant to the contracts specified in the Schedule shall become subject to the terms of this contract upon its effective date. The terms of the contract by which such Facilities may have been provided to the Contractor are hereby superseded with respect to such Facilities, except for rights and obligations which may have accrued under such other contract prior to the effective date hereof.

(b) Each item of Facilities hereafter provided to the Contractor under any related procurement contract shall become subject to the terms of this contract upon the completion of its construction, acquisition, and installation, or upon its availability for use, whichever first occurs, except as otherwise provided in the contract or other document by which such Facilities are provided to the Contractor.

(End of clause)

7-706.26 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-706.27 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-706.28 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-706.29 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-706.30 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-706.31 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 8—Letter Contracts

7–801 Applicability. This Part sets forth uniform contract clauses for use in letter contracts as defined in 3–408(a).

7–802 Required Clauses. The following clauses shall be inserted in all letter contracts.

7–802.1 *General.* Letter contracts shall include all clauses which statute, executive order, or this Regulation require to be included in the type of definitive contract contemplated by the letter contract. The letter contract also shall include such additional clauses as are known to be appropriate for the definitive contract which is contemplated.

7–802.2 *Execution, Commencement of Work, and Priority Rating.* (This clause may be omitted when Standard Form 26 is used to award the letter contract.)

EXECUTION, COMMENCEMENT OF WORK, AND PRIORITY RATING (1964 MAR)

The Contractor's acceptance of this order will be indicated by affixing its signature to three copies thereof and returning the executed copies to the Contracting Officer not later than .... Upon acceptance by both parties, the Contractor shall proceed with performance of the work described herein, including procurement of necessary materials. An appropriate priority rating, in accordance with the Department of Defense Priorities and Allocation Manual, will be assigned to this letter contract.

(End of clause)

7–802.3 *Limitation of Government Liability.*

LIMITATION OF GOVERNMENT LIABILITY (1967 OCT)

(a) The Contractor is not authorized to make expenditures or to incur obligations, in performance of this contract, which exceed .... dollars ($.................).

(b) The maximum amount for which the Government shall be liable if this contract is terminated is .... dollars ($.................).

(End of clause)

7–802.4 *Payments Clauses for Letter Contracts.*

(a) *Cost Type.* Insert the following clause in all letter contracts contemplating a cost-type contract except letter contracts for conversion, alteration or repair of ships.

PAYMENTS OF ALLOWABLE COSTS PRIOR TO DEFINITIZATION OF CONTRACT (1972 MAY)

(a) Pending the placing of the definitive contract referred to herein, the Government shall currently reimburse the Contractor for all allowable expenditures made hereunder at the following rates:

- (i) One hundred percent (100%) of approved costs representing progress payments to Subcontractors under fixed-price type subcontracts, *provided*, that payment by the Government to the Contractor shall not exceed eighty percent (80%) of the costs of such Subcontractors subject to the definition of costs contained in (c) below.
- (ii) One hundred percent (100%) of approved costs representing cost-reimbursement type subcontracts, *provided*, that payments by the Government shall not exceed eighty-five percent (85%) of the costs of such Subcontractors subject to the definition of costs contained in (c) below; and
- (iii) eighty-five percent (85%) of all other approved costs subject to the definition of costs contained in (c) below.

(b) For the purpose of determining the amounts payable to the Contractor hereunder, allowable items of cost shall be determined by the Contracting Officer in accordance with the statement of cost principles set forth in Part .... of Section XV of the Armed Services Procurement Regulation. In no event shall the total reimbursement made under this paragraph exceed eighty-five percent (85%) of the maximum amount of the Government's liability otherwise set forth in this letter contract.

(c) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than bi-weekly, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost. Costs shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocated and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to Contractor's subcontractors under similar cost standards. The requirement of prior payment for items or services purchased directly for the contract shall not apply where the Contractor is a small business concern.

(d) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(e) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(End of clause)

(b) *Fixed Price Type*. When, in accordance with Appendix E, Part 5 (see E-503 and E-505), payments are to be made under letter contracts contemplating a fixed-price-type contract, insert the clause set forth in 7-104.35(a) (see E-515 and E-510) unless the contract is for construction. The clause may be supplemented as provided in E-511.6 and E-516. In construction contracts, insert the clause set forth in (a) above, supplemented by appropriate title, risk of loss and other provisions.

7-802.5 *Definitization*.

(a) When it is known at the time of entering into the letter contract that the price of the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 3-807.3, paragraph (a) of the following clause may be appropriately modified to eliminate the requirement for cost or pricing data. The definitization schedule in paragraph (b) shall include (i) dates for submission of a make-or-buy plan, contractor's price, small business and small disadvantaged business subcontracting plan, if required, and other proposals; (ii) a date for commencement of negotiation of price and other terms and conditions; and (iii) a target date for definitization. The target date shall be the earliest practicable date for definitization.

DEFINITIZATION (1969 DEC)

(a) A .... type definitive contract is contemplated. To accomplish this result, the Contractor agrees to enter into negotiation promptly with the Contracting Officer over the terms of a definitive contract, which will include all clauses required by the Armed Services Procurement Regulation on the date of the execution of the letter contract, all clauses required by law on the date of the execution of the definitive contract and such other clauses, terms and conditions as may be mutually agreeable. The Contractor agrees to submit a fixed-price proposal [cost and fee proposal], and cost or pricing data supporting that quotation.

(b) The schedule for definitization of this contract is set forth below:

....

....

....

Target Date for Definitization: ....

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date set forth in (b) above or any extension thereof by the Contracting Officer, the Contracting Officer may, with the approval of the Head of the Procuring Activity, determine a reasonable price or fee in accordance with ASPR Section III, Part 8, and Section XV, subject to appeal by the Contractor as provided in the "Disputes" clause of this contract. In any event, the Contractor shall proceed with completion of the contract, subject only to the "Limitation of Government Liability" clause. After the date of the Contracting Officer's determination of price or fee, the contract shall be governed by:

(i) all clauses required by the Armed Services Procurement Regulation on the date of execution of this letter contract for either a fixed price type contract or a cost reimbursement type contract as determined by the Contracting Officer under this paragraph (c);

(ii) all clauses required by law as of the date of the Contracting Officer's determination; and

(iii) such other clauses, terms and conditions as may be mutually agreed upon.

To the extent consistent with the foregoing, all clauses, terms and conditions included in this letter contract except which by their nature are applicable only to a letter contract shall continue to be effective.

(End of clause)

(b) When the award of the letter contract is based on price competition, the following paragraph (d) shall be added to the clause in (a) above. In the blank therein, insert the contractor's proposed price on which the award was made.

(d) The definitive contract resulting from this letter contract will include a negotiated [price ceiling] [firm fixed-price] in no event to exceed $................

7-802.6 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-802.7 *Audit by Department of Defense.* Insert the clause in 7-104.41(a).

Part 9—Time and Material and Labor Hour Contracts

7-900 Scope of Part. This Part sets forth uniform contract clauses for use in time and material and labor hour types of contracts as described in 3-406.1 and 3-406.2.

7-901 Required Clauses. The following clauses shall be inserted in all time and material contracts and labor hour contracts. In labor hour contracts, the provisions governing the reimbursement of material costs may be deleted.

7-901.1 *Definitions.* Insert the contract clause set forth in 7-103.1. Additional definitions may be included in such clause *provided* they are not inconsistent with such clause or the provisions of this Regulation.

7-901.2 *Changes.*

CHANGES (1964 MAR)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in any one or more of the following: (i) drawings, designs, or specifications; (ii) method of shipment or packing; (iii) place of delivery; and (iv) the amount of Government-furnished property. If any such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this contract, or in the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in the (i) ceiling price, (ii) hourly rates, (iii) delivery schedule, and (iv) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

Instructions in 7-203.2 are applicable to this clause.

7-901.3 *Excusable Delays.* Insert the clause in 7-203.11.

7-901.4 *Termination.*

TERMINATION (1974 OCT)

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time, in part:

(i) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten (10) days (or such longer periods as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(ii) whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Contractor was not in default pursuant to (i), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be payable by the Government in whole or in part, in accordance with the provisions of this contract;

(vi) transfer title (to the extent that title has not already been transferred) and in the manner, to the extent, and at the times directed by the Contracting Officer, deliver to the Government (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government, and (C) the jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract; other special tools and

(vii) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting any amount due or owing under this clause. At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list. Any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d) above, as to the amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination, and shall pay to the Contractor the amount determined as follows:

(i) if the termination of the contract is determined to be for the convenience of the Government, there shall be included:

(A) an amount for direct labor hours (as defined in the Schedule of the contract) which shall be determined by multiplying the number of direct labor hours expended prior to the effective date of the Notice of Termination by the hourly rate or rates set forth in the Schedule, less any hourly rate payments theretofore made to the Contractor;

(B) an amount (computed pursuant to the provisions of the contract providing for payment for materials) for material expenses incurred prior to the effective date of the Notice of Termination, not previously paid to the Contractor for the performance of this contract;

(C) an amount for labor and material expenses computed as if the expenses were incurred prior to the effective date of the termination reasonably incurred after the effective date of the Notice of Termination with the approval of or as directed by the Contracting Officer, *provided* that the Contractor shall discontinue such expenses as rapidly as practicable;

(D) to the extent not included in (A), (B), and (C) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of this contract; and

(E) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; or

(ii) if the termination of the contract is for the default of the Contractor, there shall be included the amounts computed in accordance with (i) above except there shall not be included:

(A) any amount for the preparation of the Contractor's settlement proposal; or

(B) the portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), (e), and (i) hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes", from any determination made by the Contracting Officer under paragraph (c), (e), or (i) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) or (i) hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c), (e) or (i) hereof, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, the Contractor may file with the Contracting Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause must be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Contracting Officer.

(j) The Government under such terms and conditions as it prescribes may make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract, whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(End of clause)

In accordance with E–621, the last sentence of paragraph (j) in the above clause may be deleted in contracts with agencies of the United States Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

7–901.5 *Government Property.* Insert the following clause if the Government is to furnish to the contractor, or contractor is to acquire, Government property. See also 7–104.24(e), (f), and (g) for additional Government property clauses for particular situations.

GOVERNMENT PROPERTY (TIME AND MATERIAL OR LABOR HOUR) (1970 SEP)

(a) *Government-Furnished Property*. The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the Schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the ceiling price, hourly rate, the delivery or performance date, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the ceiling price, rate, the delivery or performance date, or all of them, and any other contractual provision affected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-Furnished Property*.

(1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the Schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title*. Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor title to which vests in the Government under this paragraph, are subject to the provisions of this clause and are hereinafter collectively referred to as "Government property". Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property Administration.* The Contractor shall comply with the provisions of Appendix B, Armed Services Procurement Regulation, as in effect on the date of the contract, which is hereby incorporated by reference and made a part of this contract. Material to be furnished by the Government shall be ordered or returned by the Contractor, when required, in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation) as in effect on the date of this contract, which Manual is hereby incorporated by reference and made a part of this contract.

(e) *Use of Government Property.* The Government property shall, unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Utilization, Maintenance and Repair of Government Property.* The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with applicable provisions of Appendix B, a program for the utilization, maintenance, repair, protection and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection of Government property.

(g) *Risk of Loss.*

(1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

- (i) which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of:
  - (A) all or substantially all of the Contractor's business; or
  - (B) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or
  - (C) a separate and complete major industrial operation in connection with the performance of this contract;
- (ii) which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above:
  - (A) to maintain and administer, in accordance with sound industrial practice, the program for utilization, maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written directions of the Contracting Officer under paragraph (f) hereof; or
  - (B) to establish, maintain and administer, in accordance with (d) above, a system for control of Government property;
- (iii) for which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the Schedule;
- (iv) which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or
- (v) which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

Any failure of the Contractor to act, as provided in subparagraph (ii) above, shall be conclusively presumed to be a failure resulting from willful misconduct, or lack of good faith on the part of such directors, officers, or other representatives mentioned in subparagraph (i) above, if the Contractor is notified by the Contracting Officer by registered or certified mail addressed to one of such directors, officers, or other representatives, of the Government's disapproval, withdrawal of approval, or nonacceptance of the Contractor's program or system. In such event, it shall be presumed that any loss or damage to Government property resulted from such failure. The Contractor shall be liable for such loss or damage unless he can establish by clear and convincing evidence that such loss or damage did not result from his failure to maintain an approved program or system, or occurred during such time as an approved program or system for control of Government property was maintained.

If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(2) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(3) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the Contracting Officer thereof, and shall communicate with the Loss and Salvage Organization, if any, now and hereafter designated by the Contracting Officer, and with the assistance of the Loss and Salvage Organization so designated (unless the Contracting Officer has designated that no such organization be employed), shall take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order, and furnish to the Contracting Officer a statement of:

- (i) the lost, destroyed and damaged Government property;
- (ii) the time and origin of the loss, destruction or damage;
- (iii) all known interests in commingled property of which the Government property is a part; and
- (iv) the insurance, if any, covering any part of or interest in such commingled property.

The Contractor shall make repairs and renovations of the damaged Government property or take such other action, as the Contracting Officer directs. For any such repairs or renovations so directed, the Contracting Officer shall, upon written request of the Contractor, equitably adjust the ceiling price, hourly rate, delivery or performance date, or all of them in accordance with the procedures provided for in the clause of this contract entitled "Changes." In any such equitable adjustment due regard shall be given to the liability of the Contractor as determined under (1) above.

(4) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracting Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

*(5) If this contract is for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involves the furnishing of aircraft by the Government, the clause of this contract entitled "Flight Risks" shall control, to the extent it is applicable, in the case of loss or destruction of, or damage to, aircraft. (**This subparagraph may be omitted where it is clearly inapplicable.*)

(h) *Access.* The Government, and any persons designated by it, shall at all reasonable times have access to the premises where any of the Government property is located, for the purpose of inspecting the Government property.

(i) *Final Accounting and Disposition of Government Property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, and shall prepare for shipment, delivery f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as the Contracting Officer may direct.

(j) *Restoration of Contractor's Premises and Abandonment.* Unless otherwise provided herein, the Government:

(i) may abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing or in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors" (Appendix H, Armed Services Procurement Regulation).

(End of clause)

As provided in paragraph (i) of the above clause, the contracting officer may, subject to Departmental procedures, authorize or approve use of the contractor's established scrap disposal and accounting procedures whenever the amount and recoverable value of scrap from Government property are relatively minor and the contractor's established procedures for accumulating and disposing of scrap and crediting the proceeds thereof to general overhead or other general cost will permit the Government to share equitably in such scrap recovery through a reduction of overhead or other cost factor affecting reimbursement under the contract.

7-901.6 *Payments.*

PAYMENTS (1972 MAY)

The Contractor shall be paid as follows upon the submission of invoices or vouchers approved by the Contracting Officer.

(a) *Hourly Rate.*

(1) The amounts computed by multiplying the appropriate hourly rate, or rates, set forth in the Schedule by the number of direct labor hours performed, which rates shall include wages, overhead, general and administrative expense and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or his designee. The Contractor will substantiate vouchers by evidence of actual payment and by individual daily job timecards, or such other substantiation approved by the Contracting Officer. Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the provisions of (e) below, make payment thereon as approved by the Contracting Officer.

(2) Unless otherwise set forth in the Schedule, five percent (5%) of the amount due under this paragraph (a) shall be withheld from each payment by the Contracting Officer but the total amount withheld shall not exceed $50,000. Such amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) hereof.

(3) Unless provisions of the Schedule hereof otherwise specify, the hourly rate or rates set forth in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved

in advance by the Contracting Officer, overtime rates will be negotiated. Failure to agree upon these overtime rates will be treated as a dispute under the "Disputes" clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and Subcontracts.*

(1) Allowable costs of direct materials shall be determined by the Contracting Officer in accordance with Part 2, Section XV, of the Armed Services Procurement Regulation in effect on the date of this contract. Reasonable and allocable material handling costs may be included in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, General and Administrative expense, allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Part 2, Section XV of the Armed Services Procurement Regulation. The Contractor shall be reimbursed for items and services purchased directly for the contract only when cash, checks, or other forms of actual payment has been made for such purchased items or services. Direct materials, as referenced by this clause, are defined as those materials which enter directly into the end product, or which are used or consumed directly in connection with the furnishing of such product.

(2) The cost of subcontracts which are authorized pursuant to the "Subcontracts" clause hereof shall be reimbursable costs hereunder, *provided* such costs are consistent with subparagraph (3) below. Reimbursable cost in connection with subcontracts shall be limited to the amounts paid to the subcontractor in the same manner as for items and services purchased directly for the contract under subparagraph (1) above. The requirement of payment for reimbursement shall not apply to the Contractor who is a small business concern. Reimbursable costs shall not include any costs arising from the letting, administration, or supervision of performance of the subcontract, which costs are included in the hourly rate or rates payable under (a)(1) above.

(3) The Contractor shall, to the extent of his ability, procure materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials, and take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of such benefits, it shall promptly notify the Contracting Officer to that effect, and give the reason therefor. Credit shall be given to the Government for cash and trade discounts, rebates, allowances, credits, salvage, the value of resulting scrap when the amount of such scrap is appreciable, commissions, and other amounts which have been accrued to the benefit of the Contractor, or would have so accrued except for the fault or neglect of the Contractor. Such benefits lost through no fault or neglect on the part of the Contractor, or lost through fault of the Government, shall not be deducted from gross costs.

(c) It is estimated that the total cost to the Government for the performance of this contract will not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs which will accrue in the performance of this contract in the next succeeding thirty (30) days, when added to all other payments and costs previously accrued, will exceed eighty-five percent (85%) of the ceiling price then set forth in the Schedule, the Contractor shall notify the Contracting Officer to that effect giving his revised estimate of the total price to the Government for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for the performance of this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving his revised estimate of the total price for the performance of this contract, together with supporting reasons and documentation. If at any time during the performance of this contract, the Government has reason to believe that the work to be required in the performance of this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price set forth in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the

Contracting Officer shall have notified the Contractor in writing that such ceiling price has been increased and shall have specified in such notice a revised ceiling which shall thereupon constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price prior to the increase shall be allowable to the same extent as if such hours expended and material costs had been incurred after such increase in the ceiling price.

(e) At any time or times prior to final payment under this contract the Contracting Officer may cause to be made such audit of the invoices or vouchers and substantiating material as shall be deemed necessary. Each payment theretofore made shall be subject to reduction to the extent of amounts which are found by the Contracting Officer not to have been properly payable, and shall also be subject to reduction for overpayments, or to increase for underpayments, on preceding invoices or vouchers. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all provisions of this contract (including, without limitation, provisions relating to patents and the provisions of (f) and (g) below), the Government shall as promptly as may be practicable pay any balance due and owing the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as may be practicable following completion of the work under this contract, but in no event later than one (1) year (or such longer period as the Contracting Officer may, in his discretion, approve in writing) from the date of such completion.

(f) The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

- (i) specified claims in stated amounts, or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;
- (ii) claims, together with reasonable expenses incidental thereto, based upon the liabilities of the Contractor to third parties arising out of the performance of this contract, which are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and
- (iii) claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) The Contractor agrees that any refunds, rebates, or credits (including any interest thereon) accruing to or received by the Contractor or any assignee, which arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest thereon) in form and substance satisfactory to the Contracting Officer.

(End of clause)

The following may be inserted as paragraph (b)(4) in the foregoing "Payments" clause when the nature of the work to be performed requires the contractor to furnish material which is regularly sold to the general public in the normal course of business by the contractor, and in accordance with the limitations contained in 3-406.1 (d)(i) and (ii):

(4) When the nature of the work to be performed requires the Contractor to furnish material which is regularly sold to the general public in the normal course of business by the Contractor, the price to be paid for such material, notwithstanding (b)(1), above, shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government; *provided* that in no event shall such price be in excess of the Contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

7-901.7 *Assignment of Claims*. In accordance with 7-103.8, insert the clause therein.

7-901.8 *Disputes*. Insert the clause in 7-103.12.

7-901.9 *Convict Labor*. In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-901.10 *Subcontracts*.

SUBCONTRACTS (1979 MAR)

(a) As used in this clause, the term "subcontract" includes but is not limited to purchase orders, changes and/or modifications thereto.

(b) No subcontract shall be made by the Contractor for the furnishing of any of the work herein contracted for without the written consent of the Contracting Officer. For the purpose of this clause, purchase of raw material or commercial stock items shall not be considered work.

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-percentage-of-cost basis.

(d) The Government reserves the right to perform contractor procurement system reviews as set forth in ASPR Section XXIII.

(e) Neither consent by the Contracting Officer to any subcontract or any provisions thereof nor approval of the Contractor's procurement system shall be construed to be a determination; (i) of the acceptability of any subcontract terms or condition, (ii) of the acceptability of any subcontract price or of any amount paid under any subcontract, or (iii) to relieve the Contractor of any responsibility for performing this contract; unless such approval or consent specifically provides otherwise.

(End of Clause)

7-901.11 *Contract Work Hours and Safety Standards Act—Overtime Compensation*. In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-901.12 *Walsh-Healey Public Contracts Act*. In accordance with Section XII, Part 6, insert the clause in 7-103.17.

7-901.13 *Equal Opportunity*. In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-901.14 *Officials Not To Benefit*. Insert the clause in 7-103.19.

7-901.15 *Covenant Against Contingent Fees*. Insert the clause in 7-103.20.

7-901.16 *Audit by Department of Defense*. In accordance with 7-104.41(a), insert the clause therein.

7-901.17 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-901.18 *Gratuities.* Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.

7-901.19 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-901.20 *Authorization and Consent.* In accordance with 9-102, insert the clause in 7-103.22.

7-901.21 *Inspection and Correction of Defects.*

INSPECTION AND CORRECTION OF DEFECTS (1974 OCT)

(a) All materials, which term includes technical data when the contract does not include the clause entitled Warranty of Technical Data, furnished and services performed by the Contractor under this contract shall be subject to inspection and test by the Government to the extent practicable at all times (including the period of performance) and places, and in any event prior to acceptance. The Government, through any authorized representative, may inspect the plant or plants of the Contractor or of any of his subcontractors engaged in the performance of this contract. If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. All inspections and tests by the Government shall be performed in such a manner as will not unduly delay the work. Except as otherwise provided in this contract, acceptance of services performed and materials furnished under this contract shall be made at the place of delivery as promptly as practicable after delivery and shall be deemed to have been made no later than sixty (60) days after the date of such delivery, if acceptance has not been made earlier within such period.

(b) At any time during performance of this contract, but not later than six (6) months (or such other period as may be provided in the schedule) after acceptance of the services or materials last delivered in accordance with the requirements of this contract, the Government may require the Contractor to remedy by correction or replacement, as directed by the Contracting Officer, any services or materials which at the time of delivery thereof failed to comply with the requirement of this contract. Except as otherwise provided in paragraph (c) hereof, below, the allowability of the cost of any such replacement or correction shall be determined as provided in the "Payments" clause of this contract, but the "hourly rate" for labor hours incurred in such replacement or correction shall be reduced so as to exclude the portion of such rate attributable to profit. Corrected or replacement materials and services shall not be tendered again for acceptance unless the former tender and the requirement of correction or replacement is disclosed. If the Contractor fails to proceed with reasonable promptness to perform such replacement or correction, and if such replacement or correction may be performed within the ceiling price, or the ceiling price as increased by the Government, the Government (i) may by contract or otherwise perform such replacement or correction and charge to the Contractor any increased cost occasioned the Government thereby, and may deduct such increased cost from any amounts due the Contractor under this contract (or require repayment of any payments theretofore made), or (ii) may terminate this contract for default as provided in the "Termination" clause of this contract. Failure to agree to the amount of any such increased cost to be charged to the Contractor, or to such reduction in, or repayment of, any amount due under this contract, shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) Notwithstanding the provisions of paragraph (b) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if such failure is due to fraud, lack of good faith or willful misconduct on the part of any of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of (i) all or substantially all of the Contractor's business; (ii) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; (iii) a separate and complete major industrial operation in connection with the performance of this contract; or (iv) all or substantially all of the Contractor's operations under this contract. The Government may at any time also require the Contractor to remedy by correction or replacement, without cost to the Government, any such failure caused by one or more individual employees selected or retained by the Contractor after any such supervisory person has reasonable grounds to believe that any such employee is habitually careless or otherwise unqualified.

(d) The provisions of this clause shall apply to any corrected or replacement services or materials.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, and the work and services hereunder. Records of all inspection work by the Contractor shall be complete and available to the Government at all reasonable times during performance of this contract and for such longer period as may be specified in this contract.

(f) Except as provided in this clause and as may be provided in the Schedule, the Contractor shall have no obligation or liability to correct or replace materials furnished and services performed under this contract which at the time of delivery are defective in material or workmanship or otherwise not in conformity with the requirements of this contract.

(g) Except as otherwise provided in the Schedule, the Contractor's obligation to correct or replace Government-furnished property (which is property in the possession of or acquired directly by the Government and delivered or otherwise made available to the Contractor) shall be governed by the provisions of the "Government Property" clause of this contract.

(End of clause)

In cases where inspection and acceptance are desired at the contractor's plant, the following may be inserted in place of the last sentence of paragraph (a):

Acceptance by the Government of all the items (other than aircraft to be flown away, if any) to be furnished under this contract shall be at the plant or plants of the Contractor specified in the Schedule, or any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the inspector or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time such inspection and test are requested by the Contractor.

7-901.22 *New Material.* In accordance with 1-1208, insert the clause in 7-104.48.

7-901.23 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-901.24 *Renegotiation.* In accordance with the requirements of 7-103.13, insert the appropriate contract clause therein.

7-901.25 *Inspection System.* When it is desired to require contractors to maintain an inspection system in accordance with Military Specification MIL-I-45208 (see 14-303), insert the following clause.

INSPECTION SYSTEM (1967 AUG)

The inspection system which the Contractor is required to maintain, as provided in paragraph (e) of the "Inspection" clause of this contract, shall be in accordance with the edition of Military Specification MIL-I-45208 in effect on the date of this contract.

(End of clause)

7-901.26 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-901.27 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-901.28 *Reserved.*

7-901.29 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-901.30 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-901.31 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-902 Clauses To Be Used When Applicable.

7-902.1 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-902.2 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805, insert the clause in 7-104.20, as appropriate.

7-902.3 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein, deleting paragraph (c) and substituting the following:

> (c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government as provided in this clause and such change requires an increase or decrease in any hourly rate or in the ceiling price provided for in this contract, or in the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made in (1) ceiling price, (2) hourly rates, (3) delivery schedule, and (4) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any equitable adjustment shall be accomplished in the same manner as if such changes were directed under the "Changes" clause of this contract.

7–902.4 *Priorities, Allocations and Allotments*. In accordance with 1–307.2, insert the clause in 7–104.18.

7–902.5 *Buy American Act*. In accordance with 7–104.3, insert the clause therein.

7–902.6 *Notice to the Government of Labor Disputes*. In accordance with 7–104.4, insert the clause therein.

7–902.7 *Filing of Patent Applications*. In accordance with 9–106, insert the clause in 7–104.6.

7–902.8 *Patent Rights*. In accordance with 9–107, insert the appropriate clause in 7–302.23.

7–902.9 *Rights in Data*. In accordance with 7–104.9, insert the appropriate clause, or clauses, therein.

7–902.10 *Alterations in Contract*. When required, insert the clause in 7–105.1(a).

7–902.11 *Limitation on Withholding of Payments*. In accordance with 7–104.21, insert the clause therein.

7–902.12 *Communist Areas*. In accordance with 6–403. insert the clause in 7–103.15.

7–902.13 *Flight Risks*. In accordance with 10–504, if the contract is for development, production, modification, maintenance, or overhaul of aircraft, or if it otherwise involves furnishing of aircraft to the contractor by the Government, include the clause from 7–204.21, but substitute the paragraph (c) below for paragraph (c) of the clause in 7–204.21.

> (c) If any aircraft is damaged, lost, or destroyed, during flight, and if the amount of such damage, loss, or destruction exceeds one hundred thousand dollars ($100,000) or twenty percent (20%) of the ceiling price of this contract, whichever is less, and if the Contractor is not liable for the damage, loss, or destruction pursuant to the "Government Property" clause of this contract together with paragraph (a) above, then an equitable adjustment for any resulting repair, restoration, or replacement that is required under this contract shall be made in the ceiling price, hourly rate, delivery or performance date, or all of them and the contract shall be modified in writing accordingly; *provided*, in determining the amount of adjustment in the hourly rate that is equitable, any faults of the Contractor, his employees, or any subcontractor which materially contributed to the damage, loss, or destruction shall be taken into consideration. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

7-902.14 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b), depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause Reimbursement for War Hazard Losses in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-902.15 *Royalty Information.* In accordance with 9-110(d), insert the clause in 7-104.8(a).

7-902.16 *Reserved.*

7-902.17 *Interest.* In accordance with E-620 and E-621, insert the clause in 7-104.39.

7-902.18 *Price Reduction for Defective Cost or Pricing Data.* Insert the clause in 7-104.29(a).

7-902.19 *Limitation of Liability.* In accordance with 1-330(b), insert the appropriate clause in 7-104.45.

7-902.20 *Subcontractor Cost and Pricing Data.* Insert the clause in 7-104.42(a).

7-902.21 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-902.22 *Duty-Free Entry.* In accordance with 6-603.2, insert the clause in 7-104.31.

7-902.23 *United States Products and Services (Balance of Payments Program).* In accordance with Section VI, Part 8, insert the clause in 7-2003.53.

7-902.24 *Identification of Expenditures in the United States.* In accordance with Section VI, Part 8, insert the clause in 7-104.58.

7-902.25 *Material Inspection and Receiving Report.* Insert the clause in 7-104.62 except in negotiated subsistence procurements and contracts for tanker/barge shipments of bulk petroleum products.

7-902.26 *Insurance.* In accordance with 10-405, insert the clause in 7-104.65.

7-902.27 *Use of Excess and Near-Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-902.28 *Bills of Lading Covering Shipments To or From Contractor's Plant.* In accordance with the requirements of 19-217.1(b), insert the clause in 7-203.14.

7-902.29 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-902.30 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-902.31 *Procurement of Miniature and Instrument Ball Bearings.* In accordance with 1-2207.3, insert the clause in 7-104.38.

7-902.32 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-902.33 *Aircraft, Missile, and Space Vehicle Accident Reporting and Investigation.* In accordance with 7-104.81, insert the clause therein.

7-902.34 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-902.35 *Cost Accounting Standards*. In accordance with 3-1204, insert the clauses in 7-104.83.

7-902.36 *Term of Performance or Delivery Date*. When applicable, a clause in accordance with 7-104.92 may be used.

7-902.37 *Availability of Funds*. In accordance with 1-318, insert one of the clauses in 7-104.91.

7-902.38 *Capture and Detention*. In accordance with 10-406, insert the clause in 7-104.94.

7-902.39 *Warranty of Technical Data*. In accordance with 1-324.6, insert the clause in 7-104.9(o).

7-902.40 *Preference for United States Flag Air Carriers*. In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-902.41 *Privacy Act*. In accordance with 1-327.1, insert the clause in 7-104.96.

7-902.42 *Preference for Domestic Specialty Metals*. In accordance with 7-104.93, insert the applicable clause therein.

7-902.43 *Exclusionary Policies and Practices of Foreign Governments*. In accordance with 6-1312, insert the clause in 7-104.97.

7-902.44 *Hazardous Material Identification and Material Safety Data*. In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-902.45 *Geographic Distribution of Defense Subcontract Dollars*. In accordance with 1-340, insert the clause in 7-104.78.

7-902.46 *Reserved.*

7-902.47 *Limitations on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

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Part 10—Stevedoring Contracts

7-1000 Scope of Part. This Part sets forth uniform contract clauses for use in stevedoring contracts as defined in 22-401. These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1001 Technical Provisions. The following clauses or appropriate revisions in accordance with 22-404 shall normally be included in all stevedoring contracts.

7-1001.1 *Scope of Contract.*

SCOPE OF CONTRACT (1964 AUG)

(a) *General.* The Contractor shall load and discharge cargoes and in connection therewith shall perform all the duties of a stevedore on any vessel which the Contracting Officer may designate at .... upon the terms and conditions hereinafter set forth for the term of this contract, beginning .... and ending.............; *provided*, however, that any work started before and not completed by the expiration of this contract shall be governed by the terms of this contract unless otherwise directed by the Contracting Officer.

(b) *Contractor's Duties.*

(1) *Loading.* In loading vessel, the Contractor shall remove and handle cargo from place of rest on pier or in pier shed or within the cargo assembly area; also from open-top railroad cars, trucks and trailers alongside ship; also from barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall stow said cargo in any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks, in the order directed by and in a manner satisfactory to the Contracting Officer.

(2) *Discharging.* In discharging vessel, the Contractor shall remove and handle cargo from any space in the vessel, including bunker space, holds, 'tween decks, on deck, and deep tanks. The Contractor shall land said cargo at place of rest on pier or in pier shed or within the cargo assembly area; also on open-top railroad cars, trucks and trailers alongside ship; also on barges, lighters, scows, car floats and open-top railroad cars on car floats alongside ship. The Contractor shall perform such discharging in the order directed by and in a manner satisfactory to the Contracting Officer.

(3) *Handling Explosives.* In addition to (1) and (2) above, the following provisions are applicable to the loading and discharging of explosives:

(*a*) In loading explosives the Contractor shall perform all the stevedoring services necessary for the breaking-out and discharging from railroad cars, trucks and/or lighters alongside ship or from place of rest on pier, transporting to the vessel, and properly loading, stowing and normal securing and chocking in the vessel in a manner directed by applicable U.S. Coast Guard, Army, or Navy regulations.

(*b*) In discharging explosives the Contractor shall perform all stevedoring services necessary for discharging cargo from the vessel to place of rest on pier or the transporting to and loading into railroad cars, trucks and/or lighters. The Contractor shall also prepare and line the cars for handling the cargo (except the laying of new flooring) and shall brace, secure, cut bands, and lash the cargo in the cars in accordance with applicable regulations and shall place "explosive" placards on the cars prior to release, and shall close and seal all doors.

(*c*) The furnishing and preparation of gates, studs, new flooring, etc., for blocking railroad cars, as well as prefabrication of blocking in the vessel's hold, will be at the expense of the Government.

(*d*) The Contractor shall not be compensated for standby time when caused by slow-up or delay of one of his operations, which delay directly affects the other operations, such as delay in loading railroad cars, or in discharging from ship's hatches, unless such slow-up or delay was beyond the control and without the fault or negligence of the Contractor. This does not include the time required for shifting railroad cars. No standby time will be allowed unless previously approved by the Contracting Officer.

(4) *Cargo Assembly Area.* The term "cargo assembly area" as used in this contract, is defined as .... feet from either extremity of the vessel and for a distance of .... feet from the vessel's inboard side.

(c) *Damage Reports.* In all instances where cargo, vessel, vessel equipment, or Government equipment sustains damage through handling by the Contractor's employees, a full report of the fact and the extent of such damage shall be submitted by the Contractor to the Contracting Officer within twenty-four (24) hours following the occurrence of such damage.

(d) *Rigging and Unrigging.* When the ship's gear is used for handling cargo, the Contractor, at his own expense, shall rig and unrig all gear, including the rigging and unrigging of heavy-lift gear when the heavy-lift booms are used, and shall hoist, lower and secure hatch tents when necessary; *provided*, however, that where any one set of gear is rigged for handling less than (100) payable tons of cargo on a commodity rate basis, the Contractor shall be compensated on an extra-labor basis for the rigging and unrigging of such set of gear. Rigging and unrigging shall include topping, lowering, and trimming of booms. When the Contractor is required to perform any rigging or unrigging services for the purpose of performing extra labor services, or performs any such services at the request of the Contracting Officer for any purpose other than loading or discharging cargo on a commodity rate basis, he shall be compensated therefor at extra labor rates. When the Contractor is required to break out booms from collars or boom rest, or to reeve guys on topping lifts through blocks, he shall be compensated therefor on an extra-labor basis.

(e) *Opening and Closing Vessel.* The Contractor shall, at his own expense, remove and replace tarpaulins, battens, hatch covers, and beams with respect to all decks and deep tanks both during loading and unloading operations and when necessary because of weather or working conditions, as directed by the Contracting Officer; *provided*, however, that the opening and closing on any one hatch shall be performed on an extra-labor basis where less than one hundred (100) payable tons are to be loaded and/or discharged at the commodity rate on any hatch so worked, and also where the Contractor is required to open and close the vessel for the purpose of performing extra-labor services. The removing, handling, replacing, or setting of reefer plugs during the handling of cargo in any or all refrigerated or chilled space aboard the vessel is included in the basic commodity rate, except where the complete operation is on an extra-labor basis. When the Contractor is required to open or close reefer plugs more than once in any four (4) hour shift because of a change in orders or type of cargo, he shall be compensated therefor on the basis of fifteen (15) minute detention time for men in gangs, including equipment drivers and gang foremen.

(f) *Docking, Undocking and Shifting of Vessels.* The Contractor shall, when requested by the Contracting Officer, furnish men to handle lines for docking, undocking, and shifting of vessels, and the Government shall compensate the Contractor therefor on an extra-labor basis.

(g) *Shifting Barges, Lighters, Scows, and Car Floats.* Barges, lighters, scows, and car floats will be placed alongside the vessel without cost to the Contractor. When they are shifted from hatch to hatch, the Contractor shall do so at his own expense unless operational conditions make movement by ship's gear impracticable in which event the operation shall be at the expense of the Government.

(h) *Gear Supplied by Government.* The Government, at its own expense, shall furnish and maintain in good working order the following: blocks on booms, booms, heavy lift cranes, wire and rope falls rigged, gantlines rigged on booms, hatch tents, lighters and floating derricks, lights on wharves and vessels, pallet boards, power and steam necessary, preventers on booms, and winches. Floating derricks and heavy lift dock cranes will not be used when, in the opinion of the Contracting Officer, the ship's equipment can be used satisfactorily.

(i) *Gear Supplied by Contractor.* The Contractor shall perform an efficient stevedoring operation and, except as provided in (h) and (j) of clause, shall at his own expense, furnish all necessary and proper gear, including the following: ammunition gear (when handling ammunition and explosives), roller conveyors, hooks, cargo nets, save-all nets, rollers, skids, chain slings, platform slings, wire and rope slings (except heavy-lift slings used in connection with shore or floating heavy-lift cranes), drag lines, spreaders, hand-trucks, machinery dollies, trailers, lift trucks, tractors, and tractor cranes; *provided*, however, that the Contractor shall be compensated for furnishing mobile equipment in accordance with the applicable schedule in the "Schedule of Rates" clause of this contract, whenever such equipment is furnished in connection with services performed on an extra-labor basis.

(j) *Rental of Mobile Equipment.*

(1) The Contractor, when directed by the Contracting Officer to supply extra-labor services, shall upon request of the Contracting Officer also supply and maintain the necessary mobile equipment to the extent available, and the Contractor shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(2) Upon request, the Government will supply mobile equipment, if available, to the Contractor, and the Government shall be compensated therefor at the rates set forth in the applicable schedule of the "Schedule of Rates" clause of this contract.

(3) If the Government supplies mobile equipment to the Contractor for use in performing extra-labor services, no charge shall be made by the Government for the use of such mobile equipment.

(k) *Transportation of Gear by Contractor.* The Contractor will transport his own gear and equipment when necessary at his own expense, except transportation of said gear and equipment shall be at Government expense when the vessel is loading or unloading in stream, or at any other location inaccessible to trucks.

(l) *Tiering.* If cargo tiered on the pier or in the cargo assembly area is beyond the reach of the Contractor's equipment, the Government will break it down at the place of tiering so that it can be handled by the Contractor's equipment. No charge will be made by the Contractor for removing cargo from piles within the reach of his equipment. The tiering of cargo above reach of the Contractor's equipment will be at Government expense. When the Contractor is required to break down cargo tiered above the reach of his equipment or to tier cargo beyond the reach of his equipment, the Government will compensate the Contractor therefor on an extra-labor basis.

(m) *Dunnage.* The loading, shifting within the same hatch, and laying of all dunnage (including cordwood, tarpaulins, matting and reefer stripping) necessary to properly stow and secure the vessel's cargo, and reverse the operation when discharging the vessel's cargo, is included in the basic commodity rate.

(n) *Other Work.*

(1) *Lashing and Securing.* The Contractor shall, at his own expense, lash and secure all cargo below deck when loaded on a commodity-rate basis, as directed by the Contracting Officer. Lashing and securing of cargo below deck which was loaded on an extra-labor basis and the lashing of all on-deck cargo will be done at extra-labor rates. The Government will supply lumber, wire, turn-buckles, and other equipment as may be required for dunnaging, securing, and shoring cargo in all instances. dunnaging,

(2) *Unlashing and Unsecuring Cargo.* When cargo is discharged on a commodity-rate basis the Contractor shall, at his own expense, unlash all cargo on deck and below deck and shall remove all tomming, chocking, tank beds, and all types of double dunnage flooring, except false decks, as directed by the Contracting Officer. The unlashing and unsecuring of cargo on deck and below deck, if discharged on an extra-labor basis, will be done at extra-labor rates.

(3) *Carpenter Work, Welding and Burning.* All necessary carpenter work and welding and burning shall be at the expense of the Government.

(o) *Tonnage Figures and Invoices.* The weight ton referred to in this contract is a ton of two thousand two hundred forty (2,240) pounds, and the measurement ton is a ton of forty (40) cubic feet. Where rates are provided on both a weight and measurement basis, the Contractor shall be paid on the basis of a manifested ton, whichever produces the greater tonnage, the weight ton of two thousand two hundred forty (2,240) pounds or the measurement ton of forty (40) cubic feet. The maximum measurement tonnage upon which compensation is to be computed for any manifested item of cargo for any single lift shall be one hundred fifty (150) tons. The Government will furnish the Contractor a breakdown of cargo loaded or discharged according to the commodity list, or, at the option of the Contracting Officer, manifests will be furnished. Invoices for each vessel loaded or discharged will be submitted by the Contractor not later than ten (10) days after receipt of tonnage figures or manifests. Progress payments for services performed on each vessel may be made upon approval of the Contracting Officer, provided that such progress payments shall not exceed ninety percent (90%) of the direct labor cost to the Contractor of the services upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as to be satisfactory to the Contracting Officer. No services will be paid for by the Government other than those specifically enumerated herein and provided for in the rate schedule of this contract or elsewhere in this contract.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(p) *Hardship* (*Unusual Conditions*). If the Contracting Officer determines that due to unusual vessel, dock, or cargo conditions, the loading or unloading of any particular cargo at the basic commodity rates will work a hardship upon the Contractor, he may so certify in writing (in advance, if possible) and authorize the compensation to the Contractor for loading or unloading such cargo at the extra-labor rates set forth in the applicable schedule in the "Schedule of Rates" clause of this contract. Unusual conditions will include, but not be limited to, inaccessibility of ship's cargo gear to place of stowage, side port operations, and small quantities of cargo in any one hatch.

(q) *Detentions*.

(1) Detention (sometimes referred to as "stand-by time" or "waiting-time") is time lost as a result of the stoppage, or inability to start, of loading or discharging of cargo due to causes beyond the control and without the fault or negligence of the Contractor, including, but not limited to, a breakdown of the vessel's equipment or Government-furnished gear, bad weather, non-readiness of the vessel, non-arrival of cargo, or non-availability of equipment required to be furnished by the Government.

(2) When cargo is worked on a commodity rate basis the Contractor shall, without limitation, absorb each detention of .... minutes or less; but the Government shall pay the Contractor at detention rates for men in gangs, including equipment drivers and gang bosses, for each detention in excess of .... minutes including the first .... minutes thereof.

(3) When loading or discharging of cargo is performed on an extra-labor basis, the Government will pay the Contractor at extra-labor rates for the first .... minutes of each detention and will pay the Contractor on a detention rate basis for all time of each detention except the first .... minutes.

(4) Minimum time is defined as the time in addition to time actually worked for which the Contractor is required to pay his employees to comply with minimum time requirements of labor agreements applicable to the Contractor and his employees. The Government shall pay the Contractor for minimum time at detention rates.

(5) If any detention or minimum time, as defined in (1) and (4) above, is due to the fault of the Contractor or the failure of the Contractor to comply with proper instructions of the Contracting Officer the entire time resulting therefrom shall be at the expense of the Contractor.

(r) *Extra Labor*. The Contractor shall, when directed by the Contracting Officer, supply extra labor for miscellaneous services when not occasioned by the fault or negligence of the Contractor, and shall be compensated therefor on an extra-labor basis. Among the miscellaneous services for which such extra labor may be required, but not by way of limitations, are the following: ammunition handling (when commodity rate does not apply); cleaning vessel's holds and decks; handling excess dunnage and debris; handling mail and baggage; rehandling, removing or shifting cargo; removing or securing tank lids when secured by more than four (4) bolts for each lid; handling ship's stores and material.

(s) *Overtime Rates*. The Contractor shall order out men for overtime work only with the approval of the Contracting Officer. When approved by the Contracting Officer, and in accordance with such approval, the Contractor shall be paid for all overtime services, in addition to the applicable commodity rates, or man-hour rates, at the overtime differential rates set forth in the applicable schedules of the "Schedule of Rates" clause of this contract. Overtime periods will be determined in accordance with the prevailing collective bargaining agreements applicable to the Contractor and his employees.

(t) *Penalty Rates*. Except where the applicable commodity rates or man-hour rates expressly include cargo penalties, the Contractor shall be compensated for penalties, where payable under applicable collective bargaining agreements, at the rates set out in the penalty rate schedule of the "Schedule of Rates" clause of this contract.

(u) *Traveling Time*. When the Contractor is required to pay traveling time to the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract.

(v) *Transportation of Men and Other Allowances*. When the Contractor is required by applicable collective bargaining agreements to pay allowances for subsistence, quarters, and rail, bus, or boat fares in transporting the men employed, the Contractor shall be compensated therefor at the rates specified in the applicable schedule of the "Schedule of Rates" clause of this contract, or, if the contract contains no such schedule, at the actual out of pocket cost to the Contractor.

(w) *Income for Handling Lighters, Cars, etc.* Any and all income derived from sources other than provided for in this contract for the handling of cargo direct to or from lighters, barges, scows, trucks, and railroad cars, and to or from ships under this contract, will be for the account of the Contractor and shall be collected by the Contractor. Collection of this income by the Contractor is reflected in the commodity rates.

(End of clause)

7-1001.2 *Schedule of Rates.*

SCHEDULE OF RATES (1964 AUG)

(a) Commodity Rates. The Contractor will be compensated for services, except those specified elsewhere in this contract, at the commodity rates listed herein which are based on straight time rates of pay only. The rates listed herein which are based on straight time rates of pay only. The rates named in Columns A and B are based on normal operation involving use of ship's gear.

SCHEDULE I
COMMODITY TONNAGE RATES

Commodity List	LOADING A Ship's Gear 2240# 40c/f	DISCHARGING B Ship's Gear 2240# 40c/f

Note: List only commodities justifying a specific rate.

(b) Miscellaneous Hourly Rate Schedules.

TABLE OF SCHEDULES (RATE PER HOUR)

Rating	Extra Labor Straight Time Rate SCHED II	Travel Time & Detentions in Non-Explosive Area SCHED III	Overtime Differential SCHED IV	Explosive Straight Time Rate SCHED V	Travel Time & Detentions in Explosive Area SCHED VI	Explosive Overtime Differential SCHED VII	Premium Meal Hour Differential SCHED VIII Non-Explos.	Premium Meal Hour Differential SCHED VIII Explos.
Longshoremen								
Winch Drivers								
Hatch Tenders								
Fork-lift Operators								
Jitney Operators								
Crane Operators								
Ship Foremen								
Supercargoes								
Head Clerks								
Clerks								
Checkers								
Walking Bosses								
Asst. Ship Foremen								
Crane Foremen								

(c) Stevedoring Cargo Penalty Rates—Schedule IX. Penalty differentials relative to types of workers, cargo, and working conditions will be determined in accordance with the applicable collective bargaining agreements and the Contractor will be compensated therefor at the following penalty differential rates:

Cargo Carrying Straight Time Penalty of:	Rates per Man per Hour S/T	O/T	Premium Meal Hour

(d) Equipment Rental—Schedule X.

Type of Equipment	Rate per Hour*
Tractors	
Fork-lift trucks	
Cranes up to 10 tons with operator and oiler	
Cranes from 10 to 20 tons with operator and oiler	
Ross lumber carriers	
Miscellaneous small gear per gang	Rate per Gang per Hour:

* Rates per hour include fuel, lubricants, and maintenance.

7-1002 Required Clauses. The following clauses shall be inserted in stevedoring contracts, as required, except as otherwise provided in this Part.

7-1002.1 *Price Escalation and Price Revision.*

(a) The following clause shall be inserted in formally advertised stevedoring contracts.

PRICE ESCALATION (1964 AUG)

(a) The Contractor warrants that the prices set forth in this contract are based upon the wage rates, allowances, and conditions as set forth in the collective bargaining agreements between him and his direct labor employees which are in effect as of .... and which are generally applicable to the port where work under this contract is performed and are applicable to operations by the Contractor on non-Government work as well as work under this contract. The Contractor further warrants that the prices herein do not include any allowance for any increase to his costs to perform the contract that may thereafter become effective pursuant to the terms of said collective bargaining agreements or that may result from the modification(s) of said collective bargaining agreements thereafter made effective.

(b) If, during the performance of this contract, there are from time to time increases or decreases in the wage rates, allowances, fringe benefits and conditions pertaining to its direct labor employees pursuant to the provisions of the aforesaid collective bargaining agreements or as a result of effective modifications thereto which increases or decreases his costs to perform this contract, the Contractor shall notify the Contracting Officer thereof within sixty (60) days of receipt of notice of such increase or decrease. Such notice shall include the Contractor's proposal for an adjustment in the contract commodity, activity, or man-hour prices to be negotiated in accordance with paragraph (c) below, and shall be accompanied by data, in such form as the Contracting Officer may require, explaining (i) the causes, (ii) the effective date, and (iii) the amount of the increase or decrease of the Contractor's proposal for such adjustment.

(c) Promptly upon receipt of any notice and data described in (b) above, the Contractor and the Contracting Officer shall negotiate an adjustment, and the effective date thereof, in the contract commodity, activity, or man-hour prices; *provided*, however, no adjustment upward in excess of .... percent per annum of the existing commodity, activity, or man-hour prices will be allowed, except as provided in the "Changes" clause of this contract. Increases or decreases in the contract prices shall reflect, in addition to the direct labor costs and variable indirect labor costs, the concomitant increases or decreases in the following costs: social security and unemployment compensation taxes and workmen's compensation insurance. No adjustment may be made to increase the dollar amount allowances of the Contractor's profit. The agreed-upon adjustment, the effective date thereof, and the appropriately revised commodity, activity, or man-hour prices for services set forth in the schedule of rates, shall be set forth in a supplemental agreement to this contract. Failure of the parties to agree to an adjustment under this clause shall be deemed to be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. Pending agreement on, or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) Notwithstanding the foregoing, there shall be no adjustment for any increase or decrease in the quantities of labor that the Contractor contemplated for each specific commodity except as may result from modifications of the collective bargaining agreements. For the purpose of administering this clause, the Contractor shall submit to the Contracting Officer, within five (5) days after award, the accounting data and computations used by the Contractor to determine his estimated efficiency rate in the performance of this contract, to include the Contractor's computation of the costs apportioned for each rate set forth in the schedule of rates.

(e) The final invoice submitted under this contract shall include a certification that the Contractor has not experienced a decrease in rates of pay for labor or that he has given notice of all such decreases in compliance with (b) above.

(End of clause)

(b) The following clause shall be inserted in negotiated stevedoring contracts.

REVISION OF PRICES (1964 AUG)

(a) *General.* The prices fixed in this contract are based on wages and working conditions established by collective bargaining agreements and on other conditions in effect on the date of this contract. Such prices may be increased or decreased in accordance with this clause.

(b) *Demand for Negotiation.* At any time, and from time to time, subject to the limitations specified in this clause, either the Government or the Contractor may deliver to the other a written demand that the parties negotiate to revise the prices under this contract. No such demand shall be made before ninety (90) days after the date of this contract, and thereafter neither party shall make a demand having an effective date within ninety (90) days of the effective date of any prior demand; *provided*, however, that this limitation shall not be applicable in the event that during any ninety (90) day period there is a "wage adjustment" as hereinafter defined. The term "wage adjustment," as used in this clause, means a change in the wages, salaries, or other terms or conditions of employment which shall substantially affect the cost of performing this contract and which shall be generally applicable to the port where work under this contract is performed and shall be applicable to operations by the Contractor on non-Government work as well as to work under this contract. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as to which the revised prices shall be effected as to services performed thereon and thereafter. This date is hereinafter referred to as the "effective date of the price revision." Any demand under this clause, if made by the Contractor shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (c) of this clause. If the demand is made by the Government, such statements and data will be furnished by the Contractor within thirty (30) days of the delivery of the demand.

(c) *Submission of Data.* At the time or each of the times specified or provided for in paragraph (b) of this clause, the Contractor shall submit:

- (i) a new estimate and breakdown of the unit cost and the proposed prices for the services to be performed under the contract after the effective date of the price revision, itemized so far as is practicable in the manner in which the cost estimates were itemized in connection with the original negotiation of the contract;
- (ii) an explanation of the difference between the original (or last preceding) estimate and the new estimate;
- (iii) such relevant operating data, cost records, overhead absorption reports, and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate;
- (iv) a statement of the experienced costs of performance hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and
- (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract.

The Government may make such examination of the Contractor's accounts, records, and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.*

(1) Upon the filing of the statements and data required by (c) of this clause, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for services to be rendered on and after the effective date of the price revision. Negotiations for price revisions under this clause shall be conducted on the same basis, employing the same types of data, including, without limitation, comparative prices, comparative costs, and trends thereof, as in the negotiation of prices under a new contract; *provided*, however, that if the prices in the contract were arrived at as a result of competitive negotiation, the contract prices shall not be revised upward except upon the basis of, and as justified by changes in conditions occurring after the contract was entered into.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the revised price to be effective with respect to services rendered on and after the effective date of the price revision (or such other later date as the parties may fix in such supplemental agreement).

(e) *Disagreements.* If, within thirty (30) days after the date on which the statements and data are required pursuant to paragraph (b) of this clause to be filed (or such further period as may be fixed by written agreement), the Contracting Officer and the Contractor fail to agree to revised prices, the failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the "Disputes" clause of this contract, and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this clause.

(f) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price revision shall be paid upon all services performed, subject to appropriate later revisions made pursuant to (d) or (e) of this clause.

(g) *Retroactive Changes in Wages or Working Conditions.* In the event of a retroactive wage adjustment the Contractor or the Contracting Officer may request an adjustment in the prices fixed in this contract, and such adjustment will be made to the extent equitable; *provided*, however, that the prices applicable to services performed subsequent to the date of the request for price adjustment shall not be adjusted under this paragraph, it being the intent that any price adjustment under this paragraph shall cover the period prior to such request. Such request by the Contractor shall be made within thirty (30) days of such retroactive wage adjustment and shall be supported by:

(i) an estimate of the changes in cost occasioned by the retroactive wage adjustment;
(ii) complete information upon which such estimate is based; and
(iii) a certified copy of the collective bargaining agreement, arbitration award, or other document evidencing the retroactive wage adjustment.

Subject to the foregoing limitation as to the time of making a request hereunder, completion or termination of this contract shall not affect or impair the Contractor's right under this paragraph. Such adjustment shall be by mutual agreement between the Contracting Officer and the Contractor. The adjusted prices, and the manner of making adjustments with respect to services theretofore paid for, shall be incorporated in an amendment to this contract to be executed by the Contractor and the Contracting Officer. In case of disagreement concerning any question of fact, including whether any adjustment should be made, or the amount of such adjustment, such disagreement will be resolved in accordance with the "Disputes" clause of this contract. The contractor shall give written notice to the Contracting Officer of any request by or on behalf of the employees of the Contractor which may result in a retroactive wage adjustment. Such notice shall be given within twenty (20) days after such request, or if request has occurred prior to execution of this contract, at the time of execution of this contract.

(End of clause)

7-1002.2 *Changes.* **Insert the following clause in formally advertised stevedoring contracts in lieu of the clause in 7-1902.2.**

CHANGES (1964 AUG)

The Contracting Officer may, at any time by a written order, and without notice to the sureties, make changes within the general scope of this contract. If any such change causes an increase or decrease in the cost of the performance of any part of the work under this contract, an equitable adjustment shall be made in the contract price or in the applicable schedule or rates and the contract shall be modified in writing accordingly. Any claims by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

7-1002.3 *Termination.*

TERMINATION (1978 SEP)

(a) This contract may be terminated at any time by either party hereto upon sixty (60) days, or such number of days as may be otherwise provided in the Schedule, notice in writing to the other. Termination under this clause shall not affect, or relieve any party of, any obligation or liability that may have accrued prior to such termination.

(b) Upon termination of the contract under (a) above, or as provided in the "Default" clause of this contract, the Contractor shall be paid any sum due the Contractor for services performed under this contract to the date of such termination, and in the event of partial termination shall be paid in accordance with the terms of this contract for any services furnished under the portion of the contract that is not terminated; *provided*, however, any such payments shall be without prejudice to any claim which the Government may have against the Contractor under the "Default" clause of this contract or otherwise, and the Government shall have the right to offset any such claims against such payment.

(End of clause)

7-1002.4 *Indefinite Quantities.*

(a) When the contract will provide for the payment of "Fixed Charges," insert the following clause.

INDEFINITE QUANTITIES—FIXED CHARGES (1964 AUG)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government is obligated to compensate the Contractor the monthly lump sum specified in Schedule entitled "Fixed Charges," for each month or portion thereof the contract remains in effect.

(End of clause)

(b) When the contract will not provide for the payment of "Fixed Charges," insert the following clause.

INDEFINITE QUANTITIES—NO FIXED CHARGES (1964 AUG)

The amount of work and services which the Contractor may be ordered to furnish and the Government to accept hereunder, shall be the amount which shall from time to time be ordered hereunder by the Contracting Officer. In any event, however, the Government shall order, during the term of this contract, work or services having an aggregate value at the prices listed in the schedules made a part hereof of not less than one hundred dollars ($100.00).

(End of clause)

7-1002.5 *Employees of Contractor.*

EMPLOYEES OF CONTRACTOR (1964 AUG)

All employees of the Contractor employed in performance of work under this contract shall be employees of the Contractor at all times and not of the Government. The Contractor shall comply with the Social Security Act, the Longshoremen's and Harbor Workers' Compensation Act, and such Workmen's Compensation Laws and Unemployment Insurance Laws of the state where the work is performed as shall be applicable to work performed hereunder and the Contractor shall comply with all other relevant legislation, state, and Federal.

(End of clause)

7-1002.6 *Removal of Contractor's Employees.*

REMOVAL OF CONTRACTOR'S EMPLOYEES (1965 OCT)

The Contractor agrees to utilize only experienced, responsible and capable people in the performance of the work. The Contracting Officer may require that the Contractor remove from the Government job employees who endanger persons or property, or whose continued employment under this contract is inconsistent with the interests of military security.

(End of clause)

7-1002.7 *Liability and Insurance.*

LIABILITY AND INSURANCE (1977 JAN)

(a) The Contractor shall be:

- (i) liable to the Government for loss of or damage to property, real and personal, owned by the Government or for which the Government is liable;
- (ii) responsible for, and hold the Government harmless from, loss of or damage to property not included in (i) above; and
- (iii) responsible for, and hold the Government harmless from, bodily injury and death of persons,

occasioned either in whole or in part by the negligence or fault of the Contractor, his officers, agents, or employees in the performance of work under this contract. For the purpose of this clause, all cargo loaded or unloaded under this contract is agreed to be property owned by the Government or property for which the Government is liable. The amount of the loss or damage as determined by the Contracting Officer will be withheld from payments otherwise due the Contractor. Determination of liability and responsibility by the Contracting Officer will constitute questions of fact within the meaning of the "Disputes" clause of this contract. The general liability and responsibility of the Contractor under this clause are subject only to the following specific limitations.

(b) The Contractor shall not be responsible to the Government for and does not agree to hold the Government harmless from loss or damage to property or bodily injury to or death of persons if:

- (i) the unseaworthiness of the vessel or failure or defect of the gear or equipment furnished by the Government contributed jointly with the fault or negligence of the Contractor in causing such damage, injury or death, and the Contractor, his officers, agents, and employees, by the exercise of due dilligence, could not have discovered such unseaworthiness or defect of gear or equipment, or through the exercise of due dilligence could not otherwise have avoided such damage, injury, or death; or
- (ii) the damage, injury or death resulted solely from an act or omission of the Government or its employees or resulted solely from proper compliance by officers, agents, or employees of the Contractor with specific directions of the Contracting Officer.

(c) The Contractor shall at his own expense procure and maintain insurance during the term of this contract, as follows:

- (i) Standard Workmen's Compensation and Employer's Liability Insurance and Longshoremen's and Harbor Workers' Compensation Insurance, or such of these as may be proper under applicable state or Federal statutes. The Contractor may however, be self-insurer against the risk in this subparagraph (i), if he has obtained the prior approval of the Contracting Officer. This approval will be given upon receipt of satisfactory evidence that the Contractor has qualified as such self-insurer under applicable provision of law.
- (ii) Bodily Injury Liability Insurance in an amount of not less than $300,000 on account of any one occurrence.
- (iii) Property Damage Liability Insurance (which shall include any and all property, whether or not in the care, custody, or control of the Contractor) in an amount of not less than $300,000 on account of any one occurrence.

(d) All policies of insurance required under the terms of this contract shall, by appropriate endorsement or otherwise, provide that no cancellation thereof shall be effective for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice thereof has been given to the Contracting Officer.

(e) Satisfactory evidence of the required insurance endorsed as required in (d) above, shall be filed with the Contracting Officer prior to the performance of any work under this contract.

(f) The Contractor shall, at his own cost and expense, defend any suits, demands, claims, or actions, in which the United States might be named as a codefendant of the Contractor, arising out of or as a result of the Contractor's performance of work under this contract, whether or not such suit, demand, claim, or action arose out of or was the result of the Contractor's negligence. This shall not prejudice the right of the Government to appear in such suit, participate in defense, and take such actions as may be necessary to protect the interests of the United States.

(g) It is expressly agreed that the provisions contained in (c) through (f) of this clause shall not in any manner limit the liability or extent of liability of the Contractor as provided in (a) and (b) of this clause.

(h) In the event that the Contractor is indemnified, reimbursed, or relieved for any loss or damage to Government property, he shall equitably reimburse the Government. The Contractor shall do nothing to prevent the Government's right to recover against third parties for any such loss, or damage and, upon the request of the Contracting Officer, shall at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instrument's of assignment in favor of the Government) in obtaining recovery.

(End of clause)

7-1002.8 *Clean Air and Water*. In accordance with 1-2302.2, insert the clause in 7-103.29.

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Part 11—Indefinite Delivery Type Contracts

7-1100 Scope of Part. This Part sets forth special uniform contract clauses for indefinite delivery type contracts as defined in 3-409. These clauses are to be used in addition to other required or applicable clauses.

7-1101 Required Clause—Ordering. The following clause shall be inserted in indefinite delivery type contracts.

ORDERING (1968 JUN)

(a) Supplies or services to be furnished under this contract shall be ordered by the issuance of delivery orders by the ....(*activity*). Orders may be issued under this contract from ....(*date*) through ....(*date*).

(b) All delivery orders issued hereunder are subject to the terms and conditions of this contract. This contract shall control in the event of conflict with any delivery order.

(c) When mailed, a delivery order shall be "issued" for purposes of this contract at the time the Government deposits the order in the mail.

(End of clause)

If desired and appropriate, a provision for the placing of oral orders may be added to the contract, *provided* that procedures have been established for obligating funds.

7-1102 Clauses To Be Used When Applicable.

7-1102.1 *Definite Quantity Contracts.* Insert substantially the following clauses.

(a) *Delivery Order Limitations.*

DELIVERY ORDER LIMITATIONS (1965 AUG)

(a) *Minimum Order:* When the Government requires supplies or services covered by this contract in an amount of less than ...., the Government shall not be obligated to purchase, nor the contractor obligated to furnish, any supplies or services under this contract.

(b) *Maximum Order:* The Contractor shall not be obligated to honor:

(i) any order for a single item in excess of ....*;

(ii) any order for a combination of items in excess of ....*; or

(iii) a series of orders from the same ordering office in the course of .... days which in the aggregate call for quantities of items to the extent that the aggregate is in excess of the limitations provided in (i) and (ii) above.

(c) Notwithstanding the foregoing, the Contractor shall honor any order received which exceeds the maximum order limitations set forth above unless the order or orders which exceed the maximum limitations are returned to the issuing office within .... days from the date of issue thereof, together with written notice of intent not to make shipment of the items called for and the reasons thereof. Upon receipt of this notice, the Government may secure the supplies from another source.

(End of clause)

**Insert dollars or quantities.*

(b) *Definite Quantity.*

DEFINITE QUANTITY (1965 AUG)

(a) This is a definite quantity, indefinite delivery contract for the supplies or services specified in the Schedule, and for the period set forth therein.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish those supplies or services when ordered by the Government. Delivery or performance shall be made to locations to be designated by the Government in orders issued in accordance with the clause entitled "Ordering" set forth in the Schedule. There shall be no limitation as to the number of orders which may be issued, subject to any limitations on quantities set forth in the clause of this contract entitled "Delivery Order Limitations," if any, or in the Schedule.

(c) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order, and the rights and obligations of the Contractor and the Government respecting that order shall be governed by the terms of this contract as fully and to the same extent as if completed during the effective period of this contract, *provided* that the Contractor shall not be required to make any deliveries under this contract after ....(*date*).

(d) The Government may issue orders which require delivery to or performance at multiple destinations.

(End of clause)

7–1102.2 *Requirements Contracts.*

(a) *Delivery Order Limitations.* Insert substantially the clause in 7–1102.1(a), adding the following paragraph:

(d) The Government is not required to order a part of any one requirement from the Contractor when such requirement exceeds the maximum order limitations set forth in (b) above.

(b) *Requirements.*

REQUIREMENTS (1966 OCT)

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth therein. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Ordering." The quantities of supplies or services specified herein are estimates only, and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) Except as otherwise provided in this contract, the Government shall order from the Contractor all the supplies or services set forth in the Schedule which are required to be purchased by the Government activity identified in the "Ordering" clause.

(c) The Government shall not be required to purchase from the Contractor, requirements in excess of the limit on total orders under this contract, if any.

(d) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order, and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period of this contract, *provided* that the Contractor shall not be required to make any deliveries under this contract after ....(date)...........

(e) If delivery of any quantity of an item covered by the contract is required by reason of urgency prior to the earliest date that delivery may be specified under this contract and if the Contractor will not accept an order providing for the accelerated delivery, the Government may procure this requirement from another source.

(f) The Government may issue orders which provide for delivery to or performance at multiple destinations.

(g) Subject to any limitations elsewhere in this contract, the Contractor shall furnish to the Government all supplies and services set forth in the Schedule which are called for by delivery orders issued in accordance with the "Ordering" clause of this contract.

(End of clause)

(1) When it is desired to use a requirements contract for nonpersonal services and supplies incidental thereto, covering requirements estimated to be in excess of a specific activity's internal capabilities of performance, the following shall be inserted in paragraph (a) of the clause after the third sentence:

> These quantities are not the total requirements of the activity named in the Schedule; they are estimates of requirements in excess of the quantities which such activity may itself furnish within its own capabilities.

Delete paragraph (b) of the clause and substitute the following:

> (b) Except as otherwise provided in this contract, the Government shall order from the Contractor all the requirements for supplies and services of the Government activity named in the Schedule in excess of the quantities which the activity may itself furnish within its own capabilities.

(2) When subsistence requirements for both troop issuance and resale have been included in the same Schedule and it is contemplated that similar products will be procured on a "brand name" basis, include the following paragraph (h) in the clause set forth above:

> (h) The requirements referred to in this contract are for items to be manufactured according to Government specifications, and notwithstanding anything to the contrary stated herein, the Government may procure similar products by "brand name" for resale purposes from other sources.

(3) When a requirement type contract is used to procure work (*e.g.*, repair, modification, overhaul) on existing items of Government property, it shall be specifically stated in the Schedule that failure of the Government to furnish such items in the amounts or quantities described as "estimated" or "maximum" in the Schedule will not entitle the contractor to any equitable adjustment in price under the "Government Property" clause of such contract.

(4) When a requirements contract involves a partial small business set-aside or a labor surplus area set-aside, substitute the following for paragraph (b) of the above clause.

> (b) Since the Government's requirements for each item or sub-item of supplies or services described in the Schedule are being procured through one non-set-aside contract and one set-aside contract, the Government shall order from each Contractor approximately one half of the total of such supplies or services set forth in the Schedule which are required to be purchased by the Government activity identified in the "Ordering" clause of this contract. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall so allocate successive orders, in accordance with its delivery requirements, as to maintain as close a balance as is reasonably practicable between the total quantities ordered from the two Contractors.

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(5) Under a multiyear acquisition using a modified requirements-type contract pursuant to 1-322.8, in the event the contract is awarded on the alternative multiyear basis, the following will be substituted for paragraph (a) of the clause.

> (a) This is a requirements contract for the supplies or services specified in the schedule, and for the currently effective period set forth therein. Delivery of supplies or performances of services shall be made only as authorized by orders issued in accordance with the clause entitled "Ordering." The quantities of supplies or services specified herein are estimates only, and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's actual total requirements for each contract item for all program years do not result in orders in the amounts or quantities described in the schedule as the aggregate Best Estimated Quantity, such event shall constitute the basis for the payment of cancellation charges in accordance with the clause entitled "Cancellation of Items." However, such event shall not otherwise constitute the basis for price adjustment under this contract.

(c) *Area Requirements*. A clause similar to the following may be used when it is not known where the supplies or services will be required.

AREA REQUIREMENTS (1965 AUG)

Each item is divided into two (2) sub-items. Sub-item A is for delivery of the item to destinations East of the Mississippi River within the continental United States. Sub-item B is for delivery of the item to destinations West of the Mississippi River within the continental United States, excluding Alaska. With respect to each item, the Government shall order, except as hereinafter set forth, all the purchase requirements of ....(*activity*) which are for delivery to any destination East of the Mississippi River, from the Contractor awarded sub-item A, and shall order all of its purchase requirements for delivery to any destination West of the Mississippi River from the Contractor awarded sub-item B.

(End of clause)

7-1102.3 *Indefinite Quantity Contract*.

(a) *Delivery Order Limitations*. Insert the clause in 7-1102.1(a).

(b) *Indefinite Quantity*.

INDEFINITE QUANTITY (1965 AUG)

(a) This is an indefinite quantity contract for the supplies or services specified in the Schedule and for the period set forth therein. Delivery or performance shall be made only as authorized by orders issued in accordance with the "Ordering" clause of this contract. The quantities of supplies or services specified herein are estimates only and are not purchased hereby.

(b) The Contractor shall furnish to the Government, when and if ordered, the supplies or services set forth in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order, and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of the contract to the same extent as if completed during the effective period of this contract, *provided* that the Contractor shall not be required to make any deliveries under this contract after ....(*date*).

(d) The Government may issue orders which provide for delivery to or performance at multiple destinations.

(End of clause)

7-1102.4 *Material Inspection and Receiving Report*. Insert the clause in 7-104.62 except in negotiated subsistence acquisitions and contracts for tanker/barge shipments of bulk petroleum products.

7-1102.5 *Limitation on Sales Commissions and Fees for Foreign Governments*. In accordance with 6-1305.6, insert the clause in 7-104.107.

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Part 12—Mortuary Services Contracts

7-1200 Scope of Part. This Part sets forth uniform contract clauses for mortuary services (care of remains) contracts (see Section XXII, Part 5). These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7-1201 Required Clauses for Other Than Port of Entry Requirements Contracts. The following clauses shall be inserted in all care of remains contracts except those for port of entry requirements.

7-1201.1 *Requirements.*

REQUIREMENTS (1965 OCT)

(a) This is a requirements contract for the supplies or services specified in the Schedule, and for the period set forth in this contract. Delivery of supplies or performance of services shall be made only as authorized by orders issued in accordance with the clause entitled "Delivery Orders and Invoices". The quantities of supplies or services specified herein are estimates only and are not purchased hereby. Except as may be otherwise provided herein, in the event the Government's requirements for supplies or services set forth in the Schedule do not result in orders in the amounts or quantities described as "estimated" or "maximum" in the Schedule, such event shall not constitute the basis for an equitable price adjustment under this contract.

(b) The Government shall order from the Contractor all the supplies, services, and transportation set forth in the Schedule which are required to be purchased by the Government activity named herein, and the Contractor shall furnish to the Government such supplies, services, and transportation as may be ordered by the Contracting Officer. The Government, however, reserves the right not to order supplies and services under this contract in instances where the body is removed from the area for medical, scientific, or other cogent reason. In the event of an epidemic or other emergency, the Contractor shall not be required to provide services in excess of the capacity of his facilities.

(End of clause)

7-1201.2 *Contract Period.*

CONTRACT PERIOD (1965 OCT)

Any contract awarded as a result of bids submitted under this Invitation for Bids shall extend from .... through ....

(End of clause)

7-1201.3 *Area of Performance.*

AREA OF PERFORMANCE (1974 APR)

(a) The area of performance is specified in Attachment 1 to this contract. This contract includes taking possession of the remains at the place where they are located, transporting them to the Contractor's place of preparation and transporting them thereafter to a place designated by the Contracting Officer. The Contractor shall not be entitled to reimbursement for transportation when both the place where the remains were located and the delivery point are within the area of performance.

(b) If remains are located outside the area of performance, the Government may call on the Contractor or obtain the services elsewhere. If the Government calls on the Contractor, the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the point where located to the boundary of the area of performance. If the Government elects to have the remains brought into the area of performance by some other means, it may require the Contractor to perform after the remains are within the area of performance.

(c) The Government may require the Contractor to deliver remains to any point within one hundred (100) miles of the area of performance. In this case the Contractor shall be paid the amount per mile indicated in the Schedule for the number of miles required to transport the remains by a reasonable route from the boundary of the area of performance to the delivery point.

(End of clause)

7-1201.4 *Specifications.*

SPECIFICATIONS (1965 OCT)

Armed Services Specifications Care of Remains of Deceased Personnel, hereinafter referred to as "Specifications" are attached hereto and made a part of this contract.

(End of clause)

7-1201.5 *Using Activities.*

USING ACTIVITIES (1965 OCT)

Contracting Officers of the following activities may order services and supplies under this contract:

....

....

....

(End of clause)

7-1201.6 *Delivery Orders and Invoices.*

DELIVERY ORDERS AND INVOICES (1965 OCT)

Delivery orders for supplies or services shall be issued by the Contracting Officer and shall set forth (i) the supplies or services being ordered, (ii) the quantities to be furnished, (iii) delivery or performance dates, (iv) place of delivery or performance, (v) packing and shipping instructions, and (vi) the address to which invoices for services rendered under this contract shall be sent. Amendments to delivery orders may be made by the Contracting Officer issuing the order. Each delivery order or change order shall cite the funds from which payment for the supplies or services ordered shall be made.

(End of clause)

7-1201.7 *Delivery and Performance.*

DELIVERY AND PERFORMANCE (1965 OCT)

Except as otherwise herein provided, the Contractor shall furnish the material ordered and perform the services specified in each case as promptly as possible but in no event later than thirty-six (36) hours after the Contractor has received notification to remove the remains, exclusive of the time necessary for the Government to inspect and check results of preparation. The Government may, at no additional charge, require the Contractor to hold the remains for an additional period not to exceed seventy-two (72) hours from the time the remains are casketed and final inspection completed.

(End of clause)

7–1201.8 *Subcontracting.*

SUBCONTRACTING (1965 OCT)

No contract shall be made by the Contractor with any other party for furnishing any of the work or services herein contracted for without the written approval of the Contracting Officer. This provision does not apply to contracts of employment between the Contractor and his personnel.

(End of clause)

7–1201.9 *Additional Default Provision.*

ADDITIONAL DEFAULT PROVISION (1965 OCT)

(a) This clause supplements the "Default" clause of this contract.

(b) This contract may be terminated for default by written notice without the ten (10) day notice specified under paragraph (a)(ii) of the "Default" clause if during the performance of this contract:

(i) the Contractor, through circumstances reasonably within his control or that of persons in his employ, performs any act or acts under or in connection with this contract, or fails in the performance of any service under this contract, and such acts or failures may reasonably be considered to reflect discredit upon the Department of Defense in fulfilling its responsibility for proper care of remains;

(ii) the Contractor, either by his own act or through persons in his employ, solicits relatives or friends of the deceased to purchase supplies or services not provided for under this contract (The Contractor may furnish supplies or arrange for services not provided for under this contract, only where such other supplies or services are voluntarily requested, selected and paid for by the representatives of the deceased.);

(iii) the services, or any part thereof, to be performed under this contract are, without the written authorization of the Contracting Officer, performed by an individual, partnership, corporation, or other person or business association whatsoever, other than the Contractor to whom this contract is awarded, his employees and members of the firm;

(iv) the Contractor refuses to perform the services required for any particular remains; or

(v) the Contractor advertises in any way that he has a contract for mortuary services with the Government.

(c) All other provisions of the "Default" clause shall apply to a termination made pursuant to this "Additional Default Provision" clause.

(End of clause)

7–1201.10 *Group Interment.*

GROUP INTERMENT (1965 OCT)

Payments to the Contractor for supplies and services provided for remains to be interred as a group shall be made on the basis of the number of caskets furnished rather than on the basis of the number of persons in the group.

(End of clause)

7–1201.11 *Professional Requirements.*

PROFESSIONAL REQUIREMENTS (1965 OCT)

The Contractor shall meet all state and local licensing requirements and shall furnish the highest quality of professional services. Preparation and transportation of remains shall be performed in accordance with all applicable Federal, state, and local health laws, statutes, and regulations. The Contractor shall obtain and furnish all necessary health department and shipping permits at no additional cost to the Government and shall insure that all necessary health department permits are in order for disposition of the remains.

(End of clause)

7–1201.12 *Facility Requirements.*

FACILITY REQUIREMENTS (1965 OCT)

The Contractor's building shall have complete facilities for maintaining the highest standards of solemnity, reverence, and assistance to the family, and for prescribed ceremonial services. The preparation room shall be clean, sanitary, and adequately equipped. The Contractor shall have, or be able to obtain, catafalques, church trucks and equipment for Protestant, Catholic, and Jewish services. The funeral home, furnishings, grounds and surrounding area shall be carefully maintained so as to present a clean and well-kept appearance.

(End of clause)

7–1201.13 *Preparation History.*

PREPARATION HISTORY (1965 OCT)

For each body prepared, or in the case of group interment for each casket handled, the Contractor shall state briefly the results of the embalming process on a certificate furnished by the Contracting Officer.

(End of clause)

7–1202 Clauses for Port of Entry Requirements Contracts. In addition to clauses prescribed by Part 19 of this Section, the clauses prescribed in 7–1201, except the Area of Performance clause in 7–1201.3 and the Facility Requirements clause in 7–1201.12, shall be inserted in all care of remains contracts for port of entry requirements. In addition, insert the Government-Furnished Property (Short Form) clause in 7–104.24(f).

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 13—Bakery and Dairy Products Contracts

7-1300 Scope of Part. This Part sets forth uniform contract clauses for use in indefinite delivery contracts as defined in 3-409, for perishable bakery and dairy products. These clauses are to be used in addition to other required or applicable clauses.

7-1301 Required Clauses. The following clause shall be included in all indefinite delivery contracts for perishable bakery and dairy products.

7-1301.1 *Delivery Vehicles and Conveyances.*

DELIVERY VEHICLES (1967 APR)

The supplies delivered under this contract shall be transported in clean, closed vehicles. The vehicles shall be maintained in a sanitary condition to prevent contamination of the supplies and shall be equipped to maintain any temperature requirement prescribed in the specification or elsewhere in this contract. The vehicles shall be subject to inspection by the Government at all reasonable times and at all places, including the plant of the Contractor. Supplies tendered for acceptance in vehicles which are not sanitary, or which are not equipped to maintain any prescribed temperatures, may be rejected without further inspection.

(End of clause)

7-1301.2 *Reserved.*

7-1301.3 *Time of Delivery.*

TIME OF DELIVERY (1967 APR)

Individual written delivery orders issued or oral delivery orders placed under this contract shall specify the locations to which deliveries shall be made and the quantities for each location. Deliveries will be completed within the hours prescribed in the Schedule of this contract and on the days specified by the order. Orders which call for delivery within less than twenty-four (24) hours from the time the Contractor receives said orders shall be governed by paragraph (e) of the clause entitled "Requirements."

(End of clause)

If an indefinite quantity contract as defined in 3-409.3 is used, rather than a requirements contract, the following shall be included instead of the last sentence of the foregoing clause.

The Contractor shall not be required to deliver within less than .... hours from the time the Contractor receives a delivery order.

7-1301.4 *Plant Locations.* Prior to award of a contract, the contractor must identify the plant or plants at which any manufacturing or processing will occur and from which shipment will be made. See 1-903.2(b). The plants named by the contractor shall be listed in the Schedule, and the following clause shall be included in the contract.

CHANGE IN PLANT LOCATION (1967 APR)

The performance of any work under this contract at any place other than that named in this contract is prohibited unless specific written advance approval is obtained from the Contracting Officer.

(End of clause)

7-1301.5 *Sanitary Conditions.*

SANITARY CONDITIONS (1967 APR)

(a) All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract, and all supplies (as the term "supplies" is defined in paragraph (a) of the clause entitled "Inspection") delivered under this contract, shall meet the sanitary standards, including bacteriological requirements, prescribed by the specifications cited elsewhere in this contract.

(b) All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of supplies under this contract shall be subject to inspection and test by the Government at all places and at all reasonable times.

(c) The Government shall notify the Contractor in writing of any failure to meet the sanitary standards, including bacteriological requirements, prescribed by this contract. If such failure has not been corrected within three (3) days from the date the Contractor receives said notice, the whole or any part of this contract may be terminated for default or, at the option of the Contracting Officer, the Contractor's right to perform under this contract may be partially or wholly suspended for not less than ten (10) days, and for such longer period of time as the Contracting Officer deems appropriate to permit correction of such failure. A suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. If the Contractor does not correct the failure to meet the sanitary standards, including bacteriological requirements, within any suspension period specified by the Contracting Officer, the Government may terminate the unexpired portion of this contract for default without allowing additional time for correction, notwithstanding paragraph (a)(ii) of the clause entitled "Default."

(End of clause)

If an indefinite quantity contract as defined in 3-409.3 is used, rather than a requirements contract, the following shall be inserted in paragraph (c) of the foregoing clause after the third sentence.

> The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

7-1301.6 *Reserved.*

7-1301.7 *Remedies Under Delivery Orders.*

REMEDIES UNDER DELIVERY ORDERS (1967 APR)

All rights and remedies afforded to the Government under the provisions of this contract may be exercised and enforced by the Government with respect to each written or oral delivery order placed under this contract.

(End of clause)

If delivery orders are to be placed by an activity other than the activity which awarded the contract, the following may be added to the foregoing clause to establish authority in the ordering officer under the Changes, Extras, Inspection, Default, and Disputes clauses for the administration of individual delivery orders.

For the purpose of the exercise of the Government's rights and remedies under one or more individual delivery orders, the term "Contracting Officer" as used in the "Changes," "Extras," "Inspection," "Default," and "Disputes" clauses, shall include the person executing or placing said order or orders.

7-1301.8 *Reserved.*

7-1301.9 *Reserved.*

7-1302 Additional Required Clauses for Perishable Dairy Products Contracts. Clauses substantially as follows shall be included in all indefinite delivery contracts for perishable dairy products.

7-1302.1 *Reserved.*

7-1302.2 *Examination and Testing.*

EXAMINATION AND TESTING (1969 DEC)

(a) The Government examination and testing of dairy products shall be in accordance with the DoD Handbook No. H-57, "Supplement A—Procurement Quality Assurance for Fresh Dairy Products." The Contractor agrees that a lot consists of a day's production of the type of product delivered or intended to be delivered. Whether sampling is conducted at origin or at destination, the Contractor agrees that the results of the tests performed using the samples selected in accordance with DoD Handbook No. H-57, Supplement A, will apply to the entire contract quantity of each type product delivered on the date specified at the time of sampling and that the results will be used in determining the weighted average of butterfat, milk solids non-fat, and total solids for the monthly period.

(b) The Government reserves the right to test all products to be delivered under the contract. Samples selected by the Government at origin shall be furnished at the expense of the Contractor and shall be considered to be representative of all the products delivered to the Government from the lot sampled. The Contractor shall certify the quantity of all products delivered from lots sampled at origin. Samples selected by the Government at destination shall be furnished at the expense of the Government and shall be considered to be representative of all of that type of product delivered to the Government on the date sampled.

(c) When samples are selected from containers of 1/2 gallon size or smaller, the entire content of the container shall constitute the sample; when samples are selected from containers larger than 1/2 gallon, a 1/2 pint sample shall be withdrawn for laboratory analysis.

(d) When the butterfat, milk solids, non-fat or total solids of any type of product as determined by chemical analysis is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in the amount determined pursuant to the clause entitled "Deficiency Adjustment." For this purpose the butterfat, milk solids non-fat, and total solids content of the entire quantity of each type of product delivered during a monthly period shall be deemed to be the weighted average of the results of the tests of all samples thereof selected during said period. If the butterfat, milk solids non-fat, or total solids content of any type of product in any monthly period, as determined by a chemical analysis of at least two (2) samples, is less than required by this contract, the Contractor shall reimburse the Government for the deficiency in an amount determined pursuant to the clause entitled "Deficiency Adjustment." Deficiencies so computed, totaling $25 or less during a monthly accounting period will not be assessed. Monthly periods commence on the first (1st) day of the contract period and on the same day of each succeeding calendar month thereafter. The butterfat, milk solids non-fat, and total solids content of one type of product will not be averaged with or offset against the content of another type of product, and the content of products delivered in any one monthly period will not be averaged with or offset against the content of products delivered in any other monthly period. No payment will be made for butterfat, milk solids non-fat, and total solids content in excess of the amount required by this contract.

(End of clause)

7-1302.3 *Deficiency Adjustment.* The formulas prescribed in the following clause may be modified to accommodate purchasing or ordering activities which do not have access to the Department of Agriculture reports cited therein.

DEFICIENCY ADJUSTMENT (1969 DEC)

(a) The amount to be paid by the Contractor to the Government as consideration for the acceptance of supplies deficient in butterfat, milk solids non-fat, or total solids, pursuant to the clause entitled "Examination and Testing," shall be determined in accordance with the following formulas:

(1) *Butterfat:* Subtract the total pounds of butterfat delivered from the total pounds of butterfat required to be delivered, and multiply the remainder by the butterfat value.

(2) *Milk Solids Non-Fat:* Subtract the total pounds of milk solids non-fat delivered from the total pounds of milk solids non-fat required to be delivered, and multiply the remainder by the milk solids non-fat value.

(3) *Total Solids:* To the total solids add any shortages for butterfat, milk solids non-fat, previously price adjusted and subtract from the total solids required to be delivered. Multiply the remainder by the milk solids non-fat value.

(b) The term "butterfat value" shall mean the average Chicago top "Wholesale Selling Price" of Grade A, 92 score butter during the monthly period for which the deficiency is computed, as reported in the Weekly Dairy Comments, Dairy and Poultry Market News, published by the Department of Agriculture, Consumer and Marketing Service, Chicago, Illinois, multiplied by 1.30. The term "milk solids non-fat value" shall mean the average Chicago top price for "Commercial Sales, Extra Grade, Nonfat Dry Milk, Spray (bags)" during the monthly period for which the deficiency is computed, as reported in the aforementioned Weekly Dairy Comments, multiplied by 1.45.

(c) The Contractor shall certify the tare weights of all containers on the shipping documents, and furnish a copy thereof to the Government inspector(s) at destination(s). The tare weight of dispenser containers shall include all parts of the container delivered as a unit, including lids, tubes, and seals. If different types of containers with different tares are included in a single delivery, the Contractor shall furnish the tare weight and identifying characteristics of each type of container. Volume and net weight shortages of any line item, revealed by inspecting a representative sample of said line item, shall be adjusted for payment by the receiving installation for the entire quantity of the line item delivered on the day the shortage is discovered. For the purpose of determining net weight, the following will apply:

(1) The weight factor of 8.8 pounds per gallon will be used for chocolate flavored milk and chocolate flavored drink.

(2) The weight factor of 8.6 pounds per gallon will be used for milk whole fresh, buttermilk fluid, milk whole fresh cultured, and milk skim fresh.

(3) The weight factor of 8.5 pounds per gallon will be used for fresh cream eighteen percent (18%) butterfat or less, half-and-half fresh, and cream sour cultured.

(4) The weight factor of 8.4 pounds per gallon will be used for all creams with a butterfat percentage of more than eighteen percent (18%).

(5) Other items such as cottage cheese, butter and so forth, shall be weighed in accordance with the weight stated on the container.

(6) For ice cream and frozen desserts, weight shall be determined based on applicable commodity specification.

(d) The foregoing is an agreed method for the adjustment of prices of noncomplying products, and is without prejudice to the Government's right to terminate for default or to pursue any other remedy under this contract or as provided by law.

(End of clause)

7-1302.4 *Warning, Suspension, Default and Reinstatement.*

WARNING (1969 DEC)

The Government shall notify the Contractor orally or in writing of any failure to meet sanitary standards, or when two of the last four consecutive lots tested are nonconforming for the same specification requirement. Oral notifications will be confirmed in writing. When this notice is based on product nonconformance, it shall be in effect so long as two of the last four consecutive lots tested exceed the same limit of the specification. An additional sample shall be taken within fourteen (14) days of such notice, but not before three (3) days have elapsed.

(End of clause)

SUSPENSION (1969 DEC)

The Contractor's right to perform may be suspended when three out of the last five consecutive lots tested are nonconforming for the same specification requirement. This suspension shall not operate to extend the life of this contract and shall not be considered sufficient cause for the extension of any delivery time. During the period of any such suspension, the Government may procure from other sources, upon such terms and in such a manner as the Contracting Officer may deem appropriate, supplies similar to those specified in the Schedule, and the Contractor shall be liable to the Government for any excess costs for such similar supplies. It is the responsibility of the Contractor to use the period of suspension to effect corrections of deficiencies and to notify the Government when such corrections are completed. Concurrently with initial notification, or any time after notification, but prior to correction of deficiencies and notification to the Government thereof, the contractor's right to perform under this contract may be partially or wholly suspended immediately if such failure results in the production of a product which is considered to be a health hazard. Any suspension shall not exceed ten (10) days.

(End of clause)

If an indefinite quantity contract as defined in 3–409.3 is used, rather than a requirements contract, the following shall be added to the foregoing clause:

The quantity of supplies designated in the Schedule as "Minimum" shall be reduced, in the event of a suspension, by an amount proportionate to the ratio between the number of days the Contractor's right to perform is suspended and the number of days in the contract period. The quantity of supplies designated as "Maximum" shall not be reduced.

DEFAULT (1969 DEC)

If the Contractor does not correct the deficiencies within this period of suspension, the Contracting Officer may terminate the unexpired portion of this contract for default without allowing additional time for correction; notwithstanding subparagraph (a)(ii) of the clause entitled "Default."

(End of clause)

REINSTATEMENT (1969 DEC)

When the Contractor's right to perform has been suspended for product nonconformances, this right may be reinstated only after the Contractor certifies, in writing, that corrective action has been taken, and the Government has verified that the Contractor has taken corrective action to its satisfaction and has so notified the Contractor in writing.

(End of clause)

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7-1302.5 *Chemical and Microbiological Requirements (Fresh Dairy Foods).*

(a) *Chemical Requirements.* Fresh dairy foods shall meet the chemical requirements of each fresh dairy food specification cited in the contract on the date of award.

(b) *Microbiological Requirements.* Milk and milk products, as defined in DLAM 8200.1, shall meet microbiological requirements stated in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

(c) *Cultured Products.* Cultured products shall meet the coliform requirements as specified in the Public Health Service Publication 229 in effect on the date of award. In the event of conflict between these requirements and individual product specifications, the requirements of Public Health Service Publication 229 shall govern.

7-1303 Clauses To Be Used When Applicable.

7-1303.1 *Code Dating.* If a Schedule or specification provision requires the labels of one or more items to show the date of pasteurization, manufacture, production, or processing, a clause substantially as follows may be included to permit the use of a coding system.

CODE DATING (1967 APR)

A code may be used to comply with the requirement set forth in the Schedule or specifications of this contract for showing a date on the labels of items delivered hereunder, *provided* that, prior to the use of a code, a written explanation thereof is furnished to the Contracting Officer and approved by him in writing. No changes in the code symbols, code system or explanation thereof, shall be made without the advance written approval of the Contracting Officer.

(End of clause)

7-1303.2 *Marking.* A clause substantially as follows shall be included, unless a provision is inserted in the Schedule specifically requiring supplies to be marked in accordance with MIL-STD-129, "Marking for Shipment and Storage."

MARKING (1967 APR)

Notwithstanding any specification references to MIL-STD-129, commercial markings are acceptable.

(End of clause)

7-1303.3 *Responsibility for Containers and Equipment.* The following clause shall be included in contracts in which the contractor provides reusable containers and equipment.

RESPONSIBILITY FOR CONTAINERS AND EQUIPMENT (1967 APR)

The Contractor shall maintain all reusable containers and equipment in a sanitary condition and in a good state of repair and working order. At the time of each delivery, the Contractor shall remove from the premises of the Government all empty reusable containers, unless the Contracting Officer grants permission in writing for less frequent removal. The Government shall not be liable for any damage to, or loss or destruction of, containers and equipment furnished by the Contractor.

(End of clause)

7-1303.4 *Reserved.*
7-1303.5 *Reserved.*

7–1303.6 *Containers and Equipment.* If the contractor is to furnish cabinets for dispensing milk from bulk containers, a notice so stating shall be included in the Schedule of solicitations and resultant contracts. The notice shall state (i) the number of dispenser cabinets required, or a reasonably accurate estimate thereof, (ii) whether metal stands for the cabinets are required, (iii) the number of cabinets required with a capacity of two containers each, and (iv) the number required with a capacity of three containers each. In addition, the following clause shall be included in the contract.

CONTAINERS AND EQUIPMENT (1967 APR)

(a) Dispenser containers and filling equipment used by the Contractor in the performance of this contract, and any refrigerated bulk milk dispenser cabinets furnished by the Contractor, shall comply with MIL-STD–175, "Minimum Sanitary Standards for the Equipment and Methods for the Handling of Milk and Milk Products in Bulk Milk Dispensing Operations," as amended.

(b) Any bulk milk dispenser cabinets required by the Schedule to be furnished by the Contractor shall be installed, serviced, and maintained to the satisfaction of the Contracting Officer. All responsibility for the supply, installation, maintenance, and removal thereof, including labor and material costs, and for any damage thereto or loss or destruction, shall remain with the Contractor.

(c) When, and for as long as, the Contractor fails to furnish bulk milk dispenser cabinets or milk dispenser containers as required in the Schedule, or does not properly service, maintain, and repair said dispenser cabinets, so that milk cannot be dispensed as needed by the Government, the Contractor shall deliver a sufficient quantity of milk in half-pint containers to satisfy orders for milk dispenser containers, at the price per gallon for milk dispenser containers.

(d) Any contamination, spoilage, leakage, or other loss of any contents of a dispenser container due to functional failure of the dispenser cabinets or dispenser containers, except for a general power failure at the Government installation, shall be replaced immediately by the Contractor without cost to the Government.

(e) The tare weight of dispenser containers required to be certified in accordance with paragraph (b) of the clause entitled "Examination and Testing" shall include all parts of the container delivered as a complete unit, including lids, tubes, and seals.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 14—Laundry and Dry Cleaning Contracts

7-1400 Scope of Part. This Part sets forth special uniform contract clauses for laundry and dry cleaning contracts (see Section XXII, Part 7). These clauses are to be used in addition to other required or applicable clauses prescribed by Section VII, Part 19.

7-1401 Required Clauses.

7-1401.1 *Activities.*

ACTIVITIES (1967 APR)

Activities to be covered by this contract are:

....

....

(End of clause)

7-1401.2 *Contract Period.*

CONTRACT PERIOD (1967 APR)

Any contract awarded as a result of bids submitted under this Invitation for Bids shall extend from .... or date of contract award, whichever is later, through ...., both dates inclusive, unless sooner terminated under the terms of the contract.

(End of clause)

7-1401.3 *Specifications.*

SPECIFICATIONS (1968 FEB)

All work under this contract shall be accomplished in accordance with specifications MIL-STD-665A and MIL-STD-666A, amendments or revisions thereto, and any other Federal or Military Specifications or Standards cited herein.

(End of clause)

7-1401.4 *Pickup and Delivery Points and Times.*

PICKUP AND DELIVERY POINTS AND TIMES (1967 APR)

The locations for pickup and delivery and the times therefor are set forth below.

Location ....
Pickup Time ....
Delivery Time ....

The unit prices include (do not include) all pickup and delivery charges.

(End of clause)

7-1401.5 *Count of Articles.*

COUNT OF ARTICLES (1967 APR)

(a) The Contractor shall be liable for return of the number and kind of articles furnished for service under this contract, in accordance with the count of the Contracting Officer, or the number and kind of articles agreed upon as a result of a joint count by the Contractor and the Contracting Officer at the time of delivery to the Contractor.

(b) Delivery tickets in the number of copies required, and in the form approved by the Contracting Officer shall be completed by the Contractor at the time of his receipt of the articles to be serviced. One copy of each delivery ticket shall accompany the Contractor's invoice.

(End of clause)

In contracts that provide for laundry or dry cleaning service to individual personnel (see 7–1401.12), add the following paragraph (c) to the above clause.

(c) Individual laundry bundle delivery tickets shall be provided by the Contractor as specified in the clause entitled "Individual Laundry" of the General Provisions of this contract.

7–1401.6 *Loss or Damage.*

LOSS OR DAMAGE (1967 APR)

(a) The Contractor shall indemnify the Government for any property delivered to the Contractor for servicing under this contract which is lost, or which is damaged and, in the opinion of the Contracting Officer, cannot be repaired satisfactorily. In either of these events, the Contractor shall pay to the Government the value thereof in accordance with Federal Supply Class price lists. If the property is not on these price lists, the Contracting Officer shall determine a fair and just price. Credit shall be allowed for any depreciation in the value of the property at the time of loss or damage, and the parties hereto shall determine the amount of the allowable credit. If the parties fail to agree upon the value of the property, or fail to agree on the amount of credit due, the dispute shall be determined as provided in the clause hereof entitled "Disputes."

(b) In case of damage to any property which the Contracting Officer and the Contractor agree can be satisfactorily repaired, the Contractor shall repair the property at his expense in a manner satisfactory to the Contracting Officer.

(End of clause)

7–1401.7 *Storage and Handling.*

STORAGE AND HANDLING (1967 APR)

During the time Government-owned property is in the possession of the Contractor, it shall be adequately stored and protected. When contaminated hospital linen is furnished for service under this contract, it shall be handled separately from other articles.

(End of clause)

7–1401.8 *Vehicles.*

VEHICLES (1967 APR)

Vehicles used in the transportation of items called for in this contract shall be clean, closed, conform to commercial standards, and equipped to protect against contamination of the items. Such vehicles shall be subject to examination at all times by the Contracting Officer or his authorized representative.

(End of clause)

7–1401.9 *Requirements or Indefinite Quantity.* Insert the Requirements clause in 7–1102.2(b) or the Indefinite Quantity clause in 7–1102.3(b), as appropriate.

7–1401.10 *Ordering.* In accordance with the requirements of 7–1101, insert the clause therein.

7–1401.11 *Special Definitions of Government Property.*

SPECIAL DEFINITIONS OF GOVERNMENT PROPERTY (1967 APR)

(a) The term "Government-furnished property," as used in this contract, means any supplies or facilities furnished to the Contractor by the Government for use in connection with the performance of this contract, but does not include the articles delivered to the Contractor to be laundered or dry cleaned.

(b) The term "Government-owned property," as used in this contract, means all of the articles delivered to the Contractor to be laundered or dry cleaned, expressly including any articles which may actually be owned by individual Government personnel.

(End of clause)

7-1401.12 *Individual Laundry*. The following clause shall be inserted in any contracts which, pursuant to Departmental authority, provide for laundry service to individual personnel.

INDIVIDUAL LAUNDRY (1967 APR)

(a) The Contractor shall provide laundry service on both a unit bundle and on a piece-rate bundle basis for individual personnel when required by this contract. The total number of pieces listed in the column "Estimated Quantity" in the Schedule is the estimated amount of individual laundry for this contract, but does not constitute any representation as to the amount of individual laundry to be required. Individuals may elect whether they shall patronize the laundry services. Services covered by this provision shall be on a weekly basis and the schedule for pickup and delivery shall be as specified elsewhere in this contract. Charges for individual laundry shall be on a per unit bundle or a piece-rate basis as indicated on the form, to be furnished by the Contractor, accompanying the bundle at time of pickup.

(b) The maximum number of pieces to be allowed per bundle is as specified in the Schedule and as follows:*

(i) Bundle consisting of twenty-six (26) pieces including laundry bag. This bundle shall contain approximately .... pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(ii) Bundle consisting of thirteen (13) pieces including laundry bag. This bundle shall contain approximately .... pieces of outer garments which are to be starched and pressed. Outer garments shall include but not be limited to cotton shirts, trousers, jackets, dresses, coats.

(c) Individual laundry bundles shall be accompanied by forms listing the items contained therein, prepared by the patrons concerned. Forms on individual laundry bundles shall clearly identify unit bundle or piece-rate bundle as applicable when both services are provided by this contract.

(End of clause)

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*The number of pieces and the composition of a bundle may be revised by the contracting officer prior to advertising to meet local conditions.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 15—Contracts for Rental of Motor Vehicles

7-1500 Scope of Part. This Part sets forth uniform contract clauses for the rental of motor vehicles as described in 4-400.

7-1501 Required Clauses. In addition to the clauses set forth in Section VII, Part 1, the following clauses shall be inserted in all contracts for the rental of motor vehicles.

7-1501.1 *Rental Payments.*

RENTAL PAYMENTS (1967 APR)

(a) The Government shall pay rent for the property at the rate(s) specified in this contract upon the submission of proper invoices and vouchers. Rental charges shall accrue with the commencement of the term of this contract, or from the date that the property is delivered to the Government, whichever is later, and shall continue until the expiration of the term or the termination of this agreement; *provided*, that rental shall accrue only for the period that the property is in the possession of the Government. No rent shall accrue with respect to any property furnished by the Contractor which the Contracting Officer determines is not in accordance with the standards prescribed by the clause of this contract entitled "Condition of the Rented Property," or is not otherwise in accordance with the requirements of this contract, until the property is replaced or the defects corrected. Furthermore, no rent shall accrue with respect to any property during any period when the property is unavailable or unusable as a result of a failure by the Contractor to render services in connection with the operation and maintenance of the property as prescribed by this contract.

(b) Rental charges stated in monthly terms shall be prorated on the basis of 1 / 30 of the monthly rental for each day the vehicle is in the Government's possession. Where the contract contains a mileage provision, rental charges shall be paid as indicated in the Schedule.

(End of clause)

7-1501.2 *Condition of the Rented Property.*

CONDITIONS OF THE RENTED PROPERTY (1967 APR)

Each item of property furnished under this contract shall be of good quality and in operating condition; *provided*, however that the Government "shall accept or reject the property promptly after receipt. If the Contracting Officer determines that any item of property furnished is not in compliance with the terms of this contract, he shall inform the Contractor promptly in writing. If the Contractor fails to replace the property or correct the defects in accordance with the determination of the Contracting Officer, the Government may (i) by contract or otherwise correct the defect or arrange for a rental of similar property and shall charge or set off against the Contractor the excess costs occasioned thereby; or (ii) terminate the contract for default as provided in the "Default" clause of this contract.

(End of clause)

7-1501.3 *Reserved.*

7-1501.4 *Responsibility and Liability for Damage or Injury/Insurance.*

RESPONSIBILITY AND LIABILITY FOR DAMAGE OR INJURY/INSURANCE (1977 JAN)

(a) The Government shall be responsible for loss or damage to rented vehicles except of (1) normal wear and tear and (2) loss or damage caused by the fault or negligence of the Contractor, his agents or employees. All claims arising under this paragraph (a) shall be submitted to the Contracting Officer.

(b) The Contractor shall be liable and will indemnify and hold harmless the Government, its agents and employees against all actions or claims for all damages to persons or property, including death arising or resulting from the fault, negligence, wrongful act, or wrongful omission of the Contractor, his agents or employees. The Government shall only be responsible for loss or damage to property of third persons, or injury, including death, to such persons in accordance with the Federal Tort Claims Act (28 U.S.C. 2671–2680).

(c) The Contractor warrants that its price includes no cost for insurance or contingency to cover:

(i) loss or damage to rented vehicles for which the Government is responsible under (a) above; or

(ii) third party liabilities for which the Government is responsible under (b) above.

(d) At his expense, the Contractor shall maintain insurance for bodily injury and property damage liability covering his own liabilities under (b) above in amounts not less than the following:

TYPE	*MINIMUM AMOUNT*
Bodily Injury	$100,000 per person $300,000 per occurrence
Property Damage	$ 10,000 per occurrence

(e) At all times during performance, the Contractor shall maintain with the Contracting Officer a current Certificate of Insurance showing at least the insurance required by this clause, and providing for such period as may be prescribed by the laws of the State in which this contract is to be performed and in no event less than thirty (30) days after written notice to the Contracting Officer in the event of cancellation or material change in insurance coverage. Insurance provided hereunder shall also contain the following provision: "The insurer waives any right of subrogation against the United States of America which may arise by reason of any payment under the certification."

(End of clause)

7–1501.5 *Marking of Vehicles.*

MARKING OF VEHICLES (1967 APR)

(a) The Government shall be permitted to place upon front and rear bumpers nonpermanent markings as may be required to identify a vehicle as to the using agency or activity.

(b) Placards may be used for temporary identification of vehicles *provided* they contain no reference to the Contractor which may be construed as advertising or endorsement by the Government of the Contractor.

(c) The Government may place an identification decal on each side of each vehicle. Decals will be of a type which can be removed without damage to the vehicle.

(End of clause)

7–1501.6 *Other Required Clauses.* Insert the clauses prescribed by 7–103, except for the clauses entitled:

Variation in Quantity,
Inspection,
Responsibility for Supplies,
Payments, and
Walsh-Healey Public Contracts Act.

7–1502 Clauses To Be Used When Applicable. Insert the appropriate clauses prescribed by 7–104.

7–1503 Additional Clauses. Insert the clauses prescribed by 7–105 when it is desired to cover the subject matter thereof in the contract.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 16—Shipment or Storage of Personal Property

7-1600 Scope of Part. This Part sets forth special uniform contract clauses for use in contracts for the preparation of personal property belonging to Department of Defense personnel, for movement or storage, and for the performance of intra-city or intra-area movement except as provided in 22-601.2(a). These clauses are to be used in addition to other required or applicable clauses.

7-1601 Required Clauses. The following clauses shall be inserted in all contracts for the preparation of personal property for movement or storage and performing intra-city or intra-area movement. Overseas commands, except those in Alaska and Hawaii, may modify these clauses when necessary to conform with local trade practices and country (including political subdivisions thereof) laws and regulations.

7-1601.1 *Scope of Contract.*

SCOPE OF CONTRACT (1977 APR)

The Packing and Containerization Contractor, hereafter referred to as *Contractor*, shall furnish services and materials for the preparation of personal property (including servicing of appliances) for movement or storage, drayage and related services. Unless otherwise indicated in the Schedule, the Contractor shall (i) furnish all materials except Government-owned containers (*Container, Federal Specification PPP-B-580 and Air Cargo*), all equipment, plant and labor; and (ii) perform all work in accomplishing containerization of personal property for overseas or domestic movement or storage; stenciling; cooperage; drayage of personal property in connection with other services; and decontainerization of inbound shipments of personal property. Excluded from the scope of this contract is the furnishing of like services or materials which are provided incident to complete movement of personal property when purchased by the *Through Government Bill of Lading* method.

(End of clause)

7-1601.2 *Period of Contract.*

(a) The following clause shall be used in contracts covering performance for an entire year.

PERIOD OF CONTRACT (1970 MAY)

This contract shall begin 1 January 19— and shall end 31 December 19—, both dates inclusive, *provided*, however, that any work ordered before, and not completed by, the expiration of this contract period shall be governed by the terms of this contract. Orders requiring commencement of performance more than 15 days after the expiration date shall not be placed under this contract.

(End of clause)

(b) When the period of performance is less than a calendar year, the above clause shall be modified to show the appropriate beginning and ending. However, the date for the end of the contract period shall not be later than 31 December of the year in which contract is awarded.

7-1601.3 *Ordering.*

(a) Insert the clause in 7-1101. In addition to the designation of each ordering activity, the individuals authorized to place orders for each activity shall be identified by name or position title.

(b) When provisions are made for the placement of oral orders in accordance with 7-1101, required documentation of such oral orders will be in accordance with Departmental instructions.

7-1601.4 *Ordering Limitation.*

ORDERING LIMITATION (1970 MAY)

Orders for items of supplies or services required will be placed under this contract by the Government and performed by the Contractor holding the initially awarded contract, to the extent of his guaranteed maximum daily capability. However, the Contractor may accept an additional quantity in excess of his capability to accommodate a single order. Orders for additional requirements will be placed with and performed by the next higher Contractor to the extent of his guaranteed maximum daily capability in a like manner. This procedure will be repeated until the Government's total daily requirement is fulfilled. In the event this procedure does not fulfill the Government's total daily requirement, additional orders may be offered under the contract to Contractors without regard to their guaranteed maximum daily capability.

(End of clause)

7-1601.5 *Contract Areas of Performance.*

CONTRACT AREAS OF PERFORMANCE (1970 MAY)

(a) All areas of performance described in (b) below will be considered to include the Contractor's facility regardless of geographical location.

(b) Service shall be performed within the following defined areas of performance which include terminals identified therein: (Define each area of performance as required, see Armed Services Procurement Regulation, paragraph 22-600.2).

(End of clause)

7-1601.6 *Requirements.* Insert the clause in 7-1102.2(b). Delete paragraph (d) of the clause and substitute the following:

(d) Orders issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order; and the rights and obligations of the Contractor and the Government respecting those orders shall be governed by the terms of this contract to the same extent as if completed during the effective period of this contract.

7-1601.7 *Estimated Quantities.*

ESTIMATED QUANTITIES (1970 MAY)

(a) The quantities shown by area of performance for each item in this Invitation for Bids are the Government's estimates of requirements which may be ordered during the period of the contract.

(b) The Government's estimated maximum daily requirements, excluding Saturday; Sunday; National, State and local holidays are listed below by area of performance within each schedule. Bidders must complete the "Bidder's Guaranteed Daily Capability," which must equal or exceed the Government's minimum acceptable daily capability, for all items within an area of performance for which they submit bids. Failure to do so will render the bid nonresponsive.

	Government's Est Maximum Daily Requirement	*Government's Minimum Acceptable Daily Capability*	*Bidder's Guaranteed Daily Capability*
Outbound (Schedule I)			
Area ____________	GCWT ____________	GCWT ____________	GCWT ____________
Inbound (Schedule II)			
Area ____________	GCWT ____________	GCWT ____________	GCWT ____________
Intra-City Area (Schedule III)			
Area ____________	NCWT ____________	NCWT ____________	NCWT ____________
(Repeat for each area listed)			

(End of clause)

7-1601.8 *Facilities.*

FACILITIES (1970 MAY)

(a) As the minimum standard for qualifications of a Contractor's warehouse, it must have either (i) an acceptable automatic sprinkler system; (ii) an acceptable automatic fire detection and reporting system; or (iii) a fire contents rate (FCR) of not more than $0.60 per one hundred dollars ($100) per year based on eighty percent (80%) co-insurance factors. Installed fire protective systems must be accredited by the cognizant fire insurance rating organization for insurance rate credit. Additionally, the facility will be protected by an adequate water supply for fire fighting and a fire department which is responsive 24 hours a day. Statements from the cognizant fire insurance rating organization, municipal fire department, or local authority, having jurisdiction, will be used as a basis for determining the sufficiency or adequacy of a fire fighting water supply and the responsiveness of a fire department to protect a facility.

(b) The following information shall be furnished by the Contractor upon receipt of award: *Evidence of the following kinds and minimum amounts of insurance covering work herein to be performed by the Contractor.* The Contractor shall maintain at least the minimum coverage stated below* throughout the contract period. Each policy shall contain an indorsement that cancellation or material change in the policy shall not be effective until after a 30-day written notice is furnished to the Contracting Officer.

(1) Workmen's Compensation Insurance $*....................
(2) Comprehensive General Liability Insurance $*....................
(3) Automobile Liability Insurance $*....................

(End of clause)

*The insurance coverage specified in 10-501 is the minimum insurance required. Additional coverage and higher limits may be required by the Contracting Officer.

7-1601.9 *Performance.*

PERFORMANCE (1977 APR)

(a) The services called for hereunder shall be performed in conformance with the latest issue of MIL-STD 212, "Preparation of Household Goods for Shipment or Storage and Related Services," in effect on date of the solicitation, for Schedules I and II, unless otherwise directed by the Contracting Officer. The following are desired minimum stowage factor standards in stuffing of shipping containers:

(1) For Federal Specification PPP-B-580 containers — 5.7 net lbs. per gross cubic foot of container cube.

(2) For air cargo containers — 8.9 net lbs. per gross cubic foot of container cube.

Failure to meet the above standards may be cause for rejection of the services performed unless the Contractor can demonstrate the standards cannot be met. (The term "stuffing" as related to containers means loading of personal property into shipping containers.)

(b) Labor employed to perform pickup and delivery, inventorying, packing, crating, weighing, marking, loading, drayage, unpacking, blocking, bracing, and other services described herein shall be competent in the performance of such services.

(c) Inventory of shipment shall be accomplished pursuant to provisions of the latest issue of MIL-STD 212 in effect on date of solicitation.

(d) All services shall be performed in accordance with the priority order established by the Contracting Officer.

(e) MIL-STD 212, "Military Standard-Preparation of Household Goods for Shipment and Storage and Related Services," and applicable specifications referred to therein are available for reference in the local procurement or transportation offices.

(f) When pickup of shipments is part of line-haul service, the Contractor shall perform loading on freight carrier's equipment at Contractor's facility.

(End of clause)

7-1601.10 *Time Requirements.*

TIME REQUIREMENTS (1970 MAY)

(a) The Contractor shall commence containerization of household goods or unaccompanied baggage at owner's residence or Contractor's facility on the date specified by the Contracting Officer. If containerization is ordered at Contractor's facility, the household goods or unaccompanied baggage shall be picked up on the date and within the hours specified. Unless a longer period is authorized by the Contracting Officer, the maximum containerization time allowed at the Contractor's facility shall be three (3) working days following specified pickup date for household goods and two (2) working days following specified pickup date for unaccompanied baggage.

(b) The Contracting Officer or his designated representative shall normally give the Contractor notice to commence containerization or to pick up household goods or baggage shipments at least twenty-four (24) hours prior to the date specified.

(c) Delivery or removal of household goods or unaccompanied baggage to or from owner's residence, or containerization of household goods or unaccompanied baggage at owner's residence, shall commence between the hours of 8:00 a.m.–12m. (noon) or 12m. (noon) - 5:00p.m. as specified, Monday through Friday, officially declared National, State or local holidays excluded. The Contracting Officer may authorize performance of services at other times when agreed to by the owner or his authorized agent and the Contractor.

(d) The Contractor shall accept and pick up inbound shipments of household goods, or unaccompanied baggage, effect delivery thereof to the destination, and shall unload and unpack the same on the date and within the hours specified by the Contracting Officer during the working hours set forth above. The Contractor will notify the Contracting Officer upon arrival of a shipment but no later than the morning of the next workday. Delivery shall be effected within two (2) working days following date of receipt or notification of arrival unless otherwise specified.

(End of clause)

7-1601.11 *Demurrage.*

DEMURRAGE (1970 MAY)

The Contractor shall be liable for all demurrage, detention, or other charges accruing as a result of his failure to load or unload trucks, freight cars, freight terminals, vessel piers, or warehouses within the free time allowed under applicable rules and tariffs.

(End of clause)

7-1601.12 *Vans.*

VANS (1970 MAY)

Vans used in transporting unpacked and uncrated furniture shall be of the closed type and shall be supplied with sufficient clean pads, covers, and any other equipment to protect personal property adequately during transit and delivery. Vehicles used in transporting containerized personal property may be of the open type *provided*, a weatherproof tarpaulin is used to protect the shipment.

(End of clause)

7-1601.13 *Drayage.*

DRAYAGE (1977 APR)

(a) Drayage under the Schedules of Items in this contract shall include all outbound or inbound hauling of loose articles, containerized shipments and empty Government containers within the area of performance as defined in the clause entitled "Contract Areas of Performance." Each area includes the Contractor's facility, storage warehouse other than Contractor's facility, frequently used air and surface transportation terminals, military installation shipping offices and ocean or river terminals/piers. The price of each item of service includes drayage within the area awarded, unless otherwise provided in the item.

(b) Repositioning of empty Government containers within the contractual area of performance, shall be as directed by the Contracting Officer or his designated representative at no additional cost to the Government.

(End of clause)

7-1601.14 *Liability.*

LIABILITY (1980 JUL)

(a) "Article" means any shipping piece or package and its contents.

(b) If notified within one (1) year after delivery that the owner has discovered loss of or damage to his property, the Contractor agrees to indemnify the owner for loss of or damage to the owner's property which arises from any cause while it is in the Contractor's possession as follows:

- (i) *Non-negligent Damage*. The Contractor shall indemnify owners for any loss of or damage to their property which results from any cause, other than the Contractor's negligence, at a rate not to exceed sixty cents ($.60) per pound per article.
- (ii) *Negligent Damage*. When loss or damage is caused by the negligence of the Contractor, he shall be liable for the full cost of satisfactory repair or for the current replacement value of the article. The Contractor shall make prompt payment to the owner of the property for any loss or damage for which the Contractor is liable.

(c) In the absence of evidence or supporting documentation which places liability on a carrier or another contractor, the destination contractor will be presumed to be liable for loss or damage of which it is timely notified.

(End of clause)

7-1601.15 *Erroneous Shipments.*

ERRONEOUS SHIPMENTS (1977 APR)

(a) It shall be the responsibility of the Contractor at his expense to have articles of personal property which he inadvertently packed with goods of other than the rightful owner forwarded to the rightful owner by the quickest means of transportation, as selected by the Contracting Officer.

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(b) Further, it shall be the responsibility of the Contractor to insure that all shipments have been stenciled correctly. When a shipment is forwarded to an incorrect address due to incorrect stenciling by the Contractor or his personnel, the shipment shall be returned with the least possible delay to its rightful owner by a mode of transportation selected by the Contracting Officer. The Contractor shall be liable for all costs incurred including charges for preparation, drayage and transportation.

(c) It shall be the responsibility of the Contractor to deliver to the designated air or surface terminal all pieces of a shipment, in one lot, at the same time. Pieces of one lot not included in delivery and remaining at Contractor's facility after the departure of the original shipment shall be forwarded to the owner with the least possible delay by a mode of transportation selected by the Contracting Officer or his designated representative. The Contractor shall be liable for all additional transportation costs incurred in excess of what it would have cost the Government had the entire lot been shipped at the same time.

(End of clause)

7-1601.16 *Additional Marking Instructions.*

ADDITIONAL MARKING INSTRUCTIONS (1970 MAY)

(a) All containers of professional books, papers or equipment shall be stenciled "Professional Books, Paper, Equipment" and their weights shall be shown separately on packing lists.

(b) Unaccompanied baggage containers shall be marked as such.

(End of clause)

7-1601.17 *Weight Certificates.*

WEIGHT CERTIFICATES (1970 MAY)

A weight certificate, in triplicate, from a certified scale or weighmaster shall be submitted to the transportation officer for all outbound shipments.

(End of clause)

7-1601.18 *Report of Lost/Damaged Material.*

REPORT OF LOST/DAMAGED MATERIAL (1977 APR)

It shall be the responsibility of the Contractor when making delivery to prepare a separate report listing all articles lost or damaged and describing such loss or damage. This report will be forwarded to the transportation officer within seven (7) working days after the delivery of the goods.

(End of clause)

7-1601.19 *Subcontracting.*

SUBCONTRACTING (1970 MAY)

The Contractor shall not subcontract without the prior written approval of the Contracting Officer. The facilities of any approved subcontractor shall meet the minimum standards required by this contract.

(End of clause)

7-1601.20 *Additional Services.*

ADDITIONAL SERVICES (1977 APR)

Additional services not included in the schedule, but required for satisfactory completion of services ordered under this contract shall be provided at a rate not in excess of the rate for like services as contained in applicable Military Rate Tenders or in the absence of a Military Rate Tender, applicable tariff in effect at time of order.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 17—Communication Service Contracts

7-1700 Scope of Part. This part prescribes clauses for "General Contracts" with common carriers and with noncommon carriers under which communication services and facilities will be ordered pursuant to Section XXII, Part 10 (see 22-1001).

7-1701 Required Clauses. The following clauses shall be inserted in all "General Contracts" for communication services and facilities. With the exception of the clauses prescribed by 7-1701.1 through 7-1701.15, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1701.1 *Definitions.* Insert the clause in 7-103.1 with the following additional paragraphs:

> (d) The term "Communication Service Authorization" (CSA) means an order for services or facilities under this contract.
>
> (e) The term "Appropriate Governmental Regulatory Body" means the Federal Communications Commission, any state-wide regulatory body, or any body with less than state-wide jurisdiction when operating pursuant to state authority. Regulatory bodies whose decisions are not subject to judicial appeal and regulatory bodies which regulate a company owned by the same entity which creates the regulatory body are not "appropriate governmental regulatory bodies" for the purposes of this contract. (1971 APR)

7-1701.2 *Assignment of Claims.* Insert the clause in 7-103.8.

7-1701.3 *Disputes.* Insert the appropriate clause in 7-103.12, with the following additional paragraph in contracts with common carriers.

> (c) The provisions of (a) above shall not apply to disputes which are subject to the jurisdiction of an appropriate governmental regulatory body. The provisions of (a) above also shall be subject to the requirements of the law with respect to the rendering of communication services and the collection of tariff charges. (1971 APR)

7-1701.4 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-1701.5 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-1701.6 *Notice to the Government of Labor Disputes.* Insert the clause in 7-104.4.

7-1701.7 *Military Security Requirements.* Insert the clause in 7-104.12.

7-1701.8 *Examination of Records by Comptroller General.* Insert the clause in 7-104.15.

7-1701.9 *Gratuities.* Insert the clause in 7-104.16.

7-1701.10 *Patent Indemnity.* Insert the clause in 7-104.5, designating the text thereof as paragraph (a) and adding the following as (b): |

> (b) This clause shall apply only to individual CSAs over $5,000 issued under this contract and covering those communications services and facilities which normally are or have been sold or offered for sale by the Contractor to the public, or which can be provided over commercially available equipment, or which involve relatively minor modifications thereto. (1971 APR)

7-1701.11 *Notice and Assistance Regarding Patent Infringement.* Insert the clause in 7-103.23

7-1701.12 *Reporting of Royalties.* In accordance with the requirements of 9-110, insert the clause in 7-104.8(a). In contracts with common carriers, revise the clause by deleting the date of the clause and by substituting the following for the first three lines of the clause:

> When the response to a solicitation for special construction or special assembly under this contract contains costs or charges for royalties totaling more than $250, the following information shall be furnished with the offer, proposal, or quotation on each separate item of royalty or license fee:

7-1701.13 *Convict Labor.* Insert the clause in 7-104.17.

7-1701.14 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-1701.15 *Equal Opportunity.* In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-1701.16 *Access.*

ACCESS (1971 APR)

(a) Subject to military security regulations, the Government shall permit the Contractor access at all reasonable times to contractor furnished facilities, *provided* that if by reason of military necessity the Government is unable to permit access, the Government at its own risk and expense shall maintain these facilities and the Contractor shall not be responsible for the service involving any of these facilities during the period of nonaccess, unless the service failure results from the Contractor's fault or negligence.

(b) During periods when Contractor access is not permitted, cost attributable to loss of or damage to the equipment due to the fault or negligence of the Government shall be reimbursed to the Contractor at mutually acceptable rates. Failure to agree shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(End of clause)

7-1701.17 *Amendment of Contract.*

AMENDMENT OF CONTRACT (1971 APR)

Upon thirty (30) days written notice, either party may request reconsideration of this contract for the purpose of revirion to conform with requirements of law or to provide for mutually acceptable changes.

(End of clause)

7-1701.18 *Obligation of the Government.*

OBLIGATION OF THE GOVERNMENT (1971 APR)

The Government incurs no monetary liability under this instrument. The Government's liability shall arise, if appropriate, upon the issuance of a CSA pursuant to the terms of this instrument.

(End of clause)

7-1701.19 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-1701.20 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-1701.21 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-1702 Clauses to be Used When Applicable. With the exception of the clauses prescribed by 7-1702.1 through 7-1702.5, 7-1702.14(b), and 7-1702.15(b), the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1702.1 *Utilization of Small Business Concerns.* In accordance with the requirements of 1-707.3(a), insert the clause therein.

7-1702.2 *Buy American Act.* In accordance with the requirements of 7-104.3, insert the clause therein.

7-1702.3 *Approval of Contract.* When the contract requires manual approval prior to becoming effective, insert the clause in 7-105.2.

7-1702.4 *Patent Rights (License).* In accordance with 9-107, insert the appropriate clause as set forth in 7-302.23.

7-1702.5 *Authorization and Consent.*

(a) Insert the following clause in contracts with common carriers.

AUTHORIZATION AND CONSENT (COMMON CARRIERS) (1971 APR)

The Government hereby gives authorization and consent (without prejudice to its rights of indemnification, if these rights are provided for in this contract) for all use and manufacture, in the performance of any order placed under this contract for communication services and facilities for which rates, charges, and tariffs are not established by a governmental regulatory body, or any part thereof or any amendments thereto or any subcontract thereunder (including any lower-tier subcontract), of any United States patented invention (i) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or (ii) utilized in the machinery, tools, or methods the use of which necessarily results from compliance by the Contractor or the using subcontractor with (A) specifications or written provisions now or hereafter forming a part of this contract, or (B) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(End of clause)

(b) Insert the clause in 7-103.22 in contracts with noncommon carriers.

7-1702.6 *Continuation of Orders.* When a communication services contract supersedes another and it is desired to transfer outstanding orders to the new contract, insert the following clause:

CONTINUATION OF ORDERS (1971 APR)

All orders heretofore issued by .... under Contract Number ...., dated ...., are transferred to this contract and shall continue in full force and effect as though placed under this contract. Orders currently in effect which were heretofore issued by the above Department under other contracts of that Department with the Contractor may likewise be transferred to this contract.

(End of clause)

7-1702.7 *Facilities and Services To Be Furnished.* Insert the following clause in contracts with common carriers:

FACILITIES AND SERVICES TO BE FURNISHED—COMMON CARRIERS (1971 APR)

(a) The Contractor shall furnish any classes of services or facilities that he offers or furnishes under published tariffs.

(b) When it is mutually agreed that the Contractor shall furnish nontariffed services, such services may be ordered in the manner provided in the clause entitled "Ordering of Facilities and Services." These may include the engineering, installation, alteration or maintenance of facilities owned either by the Contractor or by the Government, and may be located on or off Government premises or at any of its establishments.

(c) The Contractor agrees to interconnect his facilities with any Government-owned or furnished communications equipment, facilities or transmission media, in accordance with established technical criteria for assuring continuity of service and/or traffic without damage to or degradation of commercial facilities, upon request of the Contracting Officer.

(End of clause)

7-1702.8 *Ordering of Facilities and Services.* Insert the following clause in contracts with common carriers:

ORDERING OF FACILITIES AND SERVICES—COMMON CARRIERS (1971 APR)

All services and facilities furnished, as provided in the clause entitled "Facilities and Services To Be Furnished—Common Carriers" shall be ordered by the Contracting Officer on numbered CSAs referring to this contract and specifying the services and facilities desired, the premises involved, the address where bills for service shall be sent, the Disbursing Officer, and any other pertinent details. Acceptance of orders by the Contractor shall be acknowledged by (i) commencing performance or (ii) written acceptance by a duly authorized representative. The Contractor shall sign and promptly return the order to the Government when required by the Contracting Officer. Orders pursuant to this clause which are unacceptable to the Contractor shall be returned to the Contracting Officer within .... days of receipt stating the reasons therefor.

(End of clause)

7-1702.9 *Rates, Charges, and Services—Common Carriers.* Insert the following clause in contracts with common carriers:

RATES, CHARGES, AND SERVICES—COMMON CARRIERS (1971 APR)

(a) The services and facilities furnished hereunder shall be in accordance with all applicable tariffs, rates, charges, rules, regulations or requirements (i) lawfully established by an appropriate governmental regulatory body; and (ii) applicable to service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service and facilities furnished or offered by the Contractor to the general public or his subscribers; or at rates, terms and conditions of service as may be agreed upon, subject, when appropriate, to jurisdiction of an appropriate governmental regulatory body. For nontariffed services which are furnished, the Government shall be charged at the lowest rate and under the most favorable terms and conditions for similar service and facilities offered to any other customer.

(b) Recurring charges for services and facilities furnished under this contract shall, in each case, commence with satisfactory establishment of service or provision of facilities or equipments and are payable monthly in arrears.

(c) Subject to the "Cancellation or Termination of Orders—Common Carriers" clause, the Government may discontinue the use of any service or facilities furnished hereunder at any time. Upon discontinuance, the Government shall pay to the Contractor all charges for services and facilities adjusted to the effective date of discontinuance.

(d) Expediting charges are expenditures necessary to secure services earlier than those services normally would be provided, such as costs of overtime pay, or special shipment. Expediting charges shall be paid only when (i) payment thereof is provided for in the tariff established by an appropriate regulatory authority or (ii) such charges are specially authorized in an expediting CSA. When authorized, expediting charges shall be the additional costs incurred by the Contractor and the subcontractor.

(e) When the services normally provided are technically unacceptable and the requirement necessitates the development, fabrication or manufacture of special equipment, the Government may provide such equipment or may direct the Contractor to procure the equipment or facilities upon a competitive basis to the extent practicable.

(f) If at any time the Government defers or changes its orders for any of the services hereunder but does not cancel or terminate them, the amount paid or payable to the Contractor for providing the services deferred or modified shall be equitably adjusted in accordance with applicable tariffs filed by the Contractor with the regulatory commission and in effect at the time of the deferral or change or, if no tariffs are in effect, by written agreement between the Government and the Contractor. Failure to agree on any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause.

(End of clause)

7-1702.10 *Payment.*

(a) Insert the following clause in each contract with common carriers.

PAYMENT—COMMON CARRIER (1971 APR)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the provisions of CSAs issued under this contract, the rates and charges for such services and facilities as set forth in the clause entitled "Rates, Charges and Services."

(End of clause)

(b) Insert the clause in 7-103.7 in contracts with noncommon carriers.

7-1702.11 *Tariff Information.* Insert the following clause in contracts with common carriers.

TARIFF INFORMATION (1971 APR)

(a) A copy of the Contractor's current existing tariffs (including changes) shall be furnished promptly to the Contracting Officer upon request. As early as possible prior to the filing of any application to a Federal, state or any other regulatory agency seeking the establishment of, or changes in, rates, charges, services, or any other regulations relating to any tariff or any of the facilities or services to be furnished solely or primarily to the Government, the Contractor shall notify the Contracting Officer thereof and shall furnish a copy of the application. Upon request therefor, the Contractor shall furnish a copy of all information, material and data developed or prepared in support of or in connection with such application.

(b) The Contractor also shall notify the Contracting Officer of any such application which may be filed with an appropriate governmental regulatory body by anyone other than the Contractor which affects or will affect the rate or conditions of services rendered or to be rendered promptly after the Contractor himself learns of that application. The foregoing requirements shall apply also to all such applications pending on the effective date of this contract.

(End of clause)

7-1702.12 *Cancellation or Termination of Orders—Common Carriers.* Insert the following clause in all contracts with common carriers.

CANCELLATION OR TERMINATION OF ORDERS—COMMON CARRIERS (1971 APR)

(a) In the event the Government cancels, in whole or in part, any of the services which the Contractor is requested to provide under this contract, prior to the time such services are made available to the Government, or in the event that the Government terminates any of these services, in whole or in part, after they are made available to the Government, the Government shall reimburse the Contractor for the actual nonrecoverable costs which the Contractor has reasonably incurred in specially providing facilities and equipment the use of which is canceled or terminated and for which the Contractor has no foreseeable reuse. The amount of reimbursement shall be determined in the manner set forth in (b), (c) or (d) below.

(b) The amount of the Government's liability upon cancellation or termination of any of the services ordered under this contract, in whole or in part, shall be determined in accordance with applicable tariffs governing cancellation and termination charges which are filed by the Contractor with an appropriate governmental regulatory body and are in effect on the date of termination, and which provide specific cancellation or termination charges for the facilities and equipment involved or set forth the manner in which such charges will be determined.

(c) The amount of the Government's liability upon cancellation or termination, in whole or in part, of any of the services ordered under this contract, which are not subject to an appropriate governmental regulatory body, shall be determined in accordance with a mutually agreed schedule as contained in the applicable Communication Services Authorization.

(d) If no such applicable tariffs are in effect on the date of cancellation or termination or set forth in the applicable CSA, the Government's liability shall be determined at the time of cancellation or termination of the facilities and equipment in accordance with the following settlement procedures:

(1) The Contractor agrees to provide the Contracting Officer, in such reasonable detail as he may require, certified inventory schedules covering all items of property or facilities in the Contractor's possession, the cost of which is included in the "Basic Cancellation or Termination Liability" for which the Contractor has no foreseeable reuse.

(2) The Contractor shall use his best efforts to sell such property or facilities when the Contractor has no foreseeable reuse or when the Department has not exercised its option to take title under the clause entitled "Title to Communications Facilities and Equipment." Any proceeds of such sale shall be applied in reduction of any payments to be made by the Government to the Contractor under a cancellation or termination settlement.

(3) Actual nonrecoverable costs shall be recorded in accordance with the established accounting procedures prescribed by the cognizant governmental regulatory authority or, if no such procedures have been prescribed, in accordance with generally accepted accounting procedures applicable to the provision of communication services for public use.

(4) The actual nonrecoverable costs are the installed costs of the facilities and equipment, less cost of reusable materials, and less net salvage. Installed costs shall include the actual cost of equipment and materials specifically provided or used, plus the actual cost of installing (including engineering, labor, supervision, transportation, rights-of-way, and any other items which are chargeable to the capital accounts of the Contractor) except any such costs for which the Government may have directly reimbursed the Contractor under the clause entitled "Special Construction and Equipment Charges." From the Contractor's installed cost, there shall be deducted the net salvage value (salvage value less cost of removal). In determining such net salvage, due consideration shall be given to foreseeable reuse by the Contractor of the facilities and equipment and due allowance shall be made for the cost of dismantling, removal, reconditioning and disposal of the facilities and equipment when necessary either to the sale of facilities or their reuse by the Contractor in another location.

(5) The "Basic Cancellation Liability" is defined as the actual nonrecoverable cost which the Government shall reimburse the Contractor at the time services are canceled. The "Basic Termination Liability" is defined as the nonrecoverable cost amortized in equal monthly increments throughout the liability period. Upon termination of services, the Government shall reimburse the Contractor for the nonrecoverable cost less such costs amortized to the date services are terminated. The liability period shall be established as mutually agreed to but will not exceed ten (10) years.

(6) When the "Basic Cancellation or Termination Liability" established by the CSA is based on estimated costs, the Contractor agrees to settle on the basis of actual cost at the time of termination or cancellation.

(7) The Contractor agrees that, if after settlement but within the termination liability period of the services, should the Contractor make reuse of equipment or facilities which were treated as nonreusable or nonsalvable in the settlement, the Contractor shall reimburse the Government for the value thereof.

(8) The Contractor agrees that in no event shall any costs be included which are not included in determining cancellation and termination charges under the Contractor's standard practices or procedures; and no cancellation or termination charge shall be made if such charge is not ordinarily made by the Contractor with respect to similar facilities or equipment furnished under similar circumstances.

(e) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the canceled or terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments is within the amount to which the Contractor is entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest at the rate of six percent (6%) per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of the cancellation or termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(f) Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause entitled "*Disputes*."

(End of clause)

7-1702.13 *Reuse Arrangements.* Insert the following clause in contracts with common carriers.

REUSE ARRANGEMENTS (1971 APR)

(a) When feasible, the Contractor shall reuse canceled or terminated facilities or equipment to minimize the charges to the Government.

(b) If at any time the Government requires that communications facilities or equipment be relocated within the Contractor's service area, the Government shall have the option of paying the costs of relocating the facilities or equipment in lieu of paying any termination or cancellation charge. The "Basic Termination Liability" applicable to the facilities or equipment in their former location shall continue to apply to the facilities or equipment in their new location. Monthly rental charges shall continue to be paid during the period.

(c) When there is another requirement or foreseeable reuse-in-place of canceled or terminated facilities or equipment, no charge shall apply and the basic cancellation or termination liability shall be appropriately reduced. When feasible, the Contractor shall promptly reuse discontinued channels or facilities, including equipment for which the Government is obligated to pay a minimum service charge.

(End of clause)

7-1702.14 *Cost or Pricing Data.*

(a)(1) Insert the following clause in contracts with common carriers.

SUBMISSION OF COST OR PRICING DATA—COMMON CARRIERS (1971 APR)

The Contractor agrees to provide certified cost or pricing data, as requested by the Contracting Officer whenever:

(i) the services are nontariffed services;

(ii) a tariff, whether filed or contemplated to be filed, is for new services installed or developed primarily for Government use (and the data shall cover special construction charges in connection therewith);

(iii) a tariff, whether filed or contemplated to be filed, in which specific rates and charges are not included;

(iv) more than one commercial source (one or more of which is a common carrier) can offer the desired service but price competition is not considered adequate;

(v) required to support the reasonableness of special assembly rates and charges;

(vi) required to support the reasonableness of special construction and equipment charges;

(vii) required to support the reasonableness of those contingent liabilities which are fixed at the outset of the service; or

(viii) required to support proposed cancellation and termination charges (pursuant to the clause entitled "Cancellation or Termination Orders") and reuse arrangements (pursuant to the clause entitled "Reuse Arrangements").

(End of clause)

(2) In contracts with common carriers for which certified cost or pricing data are or may be required, insert the appropriate clauses in 7–104.29 (Price Reduction for Defective Cost or Pricing Data) and 7–104.42 (Subcontractor Cost and Pricing Data).

(b) In contracts with noncommon carriers, insert the appropriate clauses in 7–104.29 (Price Reduction for Defective Cost or Pricing Data) and 7–104.42 (Subcontractor Cost and Pricing Data).

7–1702.15 *Audit and Records.*

(a) Insert the following clause in contracts with common carriers.

AUDIT AND RECORDS—COMMON CARRIERS (1971 APR)

(a) For the purpose of verifying the accuracy of the cost or pricing data submitted pursuant to the clause entitled "Provision of Cost or Pricing Data—Common Carrier," the Contracting Officer or his authorized representative shall, (i) until the expiration of three (3) years from the date of the submission of the data which forms the basis for a recurring or nonrecurring charge, or (ii) until the expiration of the period of contingent liability with respect to such contingent liability, have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of the certification of the data.

(b) The Contractor shall maintain such books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly the direct and indirect costs which were the basis for the pricing of the CSA. The foregoing constitute "Records" for the purpose of this clause.

(c) The Contractor shall insert the substance of this clause in subcontracts awarded hereunder which furnish the basis for charges referred to in (a) hereof, unless its omission is authorized by the Contracting Officer.

(End of clause)

(b) In accordance with the requirements of 7–104.41, insert the appropriate clause therein in contracts with noncommon carriers.

7–1702.16 *Term and Termination of Contract.* Insert the following clause in contracts with common carriers.

TERM AND TERMINATION OF CONTRACT—COMMON CARRIERS (1976 JUL)

This contract shall be effective for an initial term commencing ....,* and ending September 30, 19........,** and shall continue in force thereafter from year to year, unless and until terminated by either party at any time upon not less than sixty (60) days' prior written notice to the other. Termination shall be applicable prospectively only and shall not operate as a cancellation of any orders previously issued or outstanding.

(End of clause)

*Insert the effective date of the contract.

**Insert the current fiscal year.

7-1702.17 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1702.18 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1702.19 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1702.20 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1702.21 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1702.22 *Reserved.*

7-1702.23 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1703 Clauses To Be Used When Special Construction Charges Are Expected. Insert the following clauses in contracts with common carriers whenever it is expected that in order to secure the services and facilities it will be necessary for the Government to reimburse the contractor for, or to assume a contingent termination liability for, all or part of the costs of constructing or providing the facilities or equipment. If the necessity of paying such charges or of assuming such a liability arises subsequent to the execution of the contract, these clauses shall be included in the contract by supplemental agreement. With the exception of the clauses prescribed by 7-1703.1 and 7-1703.2, the clauses prescribed by this paragraph may be varied to meet specific requirements of an appropriate governmental regulatory body or when the basic intent is not changed.

7-1703.1 *Labor Standards for Construction Work.* Except as provided in 18-703.3 and 18-703.4 when the special construction involves construction (as defined in 18-101.1) of a public building or public work, and under 12-106 the construction labor standards are applicable (see 22-1010.2), insert the clause in 7-705.5.

7-1703.2 *Buy American — Construction Contracts.* In accordance with 7-602.20 and 7-602.24, insert the clauses therein whenever the contract involves construction (as defined in 18-101.1).

7-1703.3 *Special Construction and Equipment Charges.*

SPECIAL CONSTRUCTION AND EQUIPMENT CHARGES (1971 APR)

(a) Except to the extent provided in the clause of this contract entitled "Cancellation or Termination of Orders," the Government shall not directly reimburse the Contractor for charges based on the cost of constructing any facilities or providing any equipment unless such direct reimbursement is specifically authorized by the Contracting Officer. If, at any time, facilities or equipment for which the Government has directly reimbursed the Contractor in whole or in part are discontinued, the Contractor shall allow the Government such credit as may be appropriate for the value of the facilities or equipment attributable to the Government's contribution. The value of the facilities and equipment shall be determined on the basis of the foreseeable reuse of the facilities and equipment by the Contractor at the time their use is discontinued or on the basis of the net salvage value, whichever is greater. The Contractor shall promptly pay the Government the amount of any such credit.

(b) The amount of any direct special construction charge shall not exceed the actual costs to the Contractor, properly allocable to the services to be provided to the Government, of specially constructing or providing the facilities or equipment involved. In no event shall the amount of any direct special construction charge include costs incurred by the Contractor which are covered by a cancellation or termination liability or by the Contractor's recurring or other nonrecurring charges. The Contractor represents that in establishing his recurring charges for the services, facilities and equipment involved, he has not included in his rate base any costs for which he has been reimbursed by the Government and that depreciation charges are based only on the cost of facilities and equipment paid by the Contractor and not reimbursed by the Government. If, due to circumstances beyond the control and without the fault of the Contractor, it becomes necessary for the Contractor to incur costs for the replacement of any facilities or equipment for which direct special construction charges were assumed by the Government or for which the Contractor was reimbursed by the Government beyond that provided as a part of the Contractor's recurring charges, the Government shall assume such costs or reimburse the Contractor for such replacement costs at rates mutually acceptable to both the Government and the Contractor. Prior to incurring such costs, the Government shall have the right to terminate such service in accordance with the clause entitled "Cancellation or Termination of Orders."

(End of clause)

7–1703.4 *Title to Communication Facilities and Equipment.*

TITLE TO COMMUNICATION FACILITIES AND EQUIPMENT (1971 APR)

Notwithstanding payment by the Government of any of the Contractor's costs of constructing communication facilities and equipment, title to all contractor furnished facilities and equipment used in providing communication services ordered under this contract shall remain in the Contractor except as may be specifically provided in a CSA issued and accepted hereunder, and the Contractor shall operate and maintain all such communication facilities and equipment.

(End of clause)

7–1703.5 *Subcontracts*. In accordance with the requirements of 23–201, insert an appropriate clause entitled Subcontracts.

7–1703.6 *Equal Opportunity Pre-Award Clearance of Subcontracts*. In accordance with 23–201.4, insert the clause in 7–104.22.

7–1703.7 *Minority Business Enterprises*. In accordance with 1–332, insert the appropriate clause or clauses in 7–104.36.

Part 18—Refuse Services Contracts

7–1800 Scope of Part. This Part sets forth uniform clauses for refuse services contracts (see Section XXII, Part 8). These clauses are to be used in addition to other required or applicable clauses set forth in Part 19 of this Section.

7–1801 Required Clauses. The following clauses shall be inserted in all refuse services contracts.

7–1801.1 *Refuse Services Definitions.*

REFUSE SERVICES DEFINITIONS (1971 NOV)

As used throughout this contract, the following terms shall have the meanings set forth below.

(a) "*Refuse*" includes all garbage, ashes, debris, rubbish and other similar waste material. Not included are explosive and incendiary waste and contaminated waste from medical and radiological processes.

(1) "*Garbage*" means animal and vegetable waste (and containers thereof) resulting from the handling, preparation, cooking, and consumption of foods. Edible, or hogfood, garbage is the portion of waste food which has been segregated for salvage.

(2) "*Ashes*" means the residue from burned wood, coal, coke, and other combustible material.

(3) "*Debris*" means grass cuttings, tree trimmings, stumps, street sweepings, roofing and construction wastes, and similar waste material.

(4) "*Rubbish*" means a variety of unsalvable waste material such as metal, glass, crockery, floor sweepings, paper, wrappings, containers, cartons and similar articles not used in preparing or dispensing food. Rubbish is further subdivided into:

(i) "*Combustible rubbish*" which can be burned readily in an incinerator or burning pit; and

(ii) "*Noncombustible rubbish*," which cannot be burned at ordinary incinerator temperatures (800 to 1,800 degrees F.).

(b) "*Receptacles*" or "*Containers*" means cans, drums, bins, or similar receptacles which can be handled easily, and multiple containers which are handled by mechanical truck-mounted hoists.

(c) "*Refuse Collection*" means a system of transporting refuse, including nonaccountable salvage, from pickup stations to points of disposal. It includes hauling garbage to the transfer station when required by the terms of a salvage contract.

(1) "*Collection*" means the accumulated refuse from any one unit at any one time, regardless of the number of cartons or bundles.

(2) "*Pickup Stations*" means designated locations where refuse may be conveniently and efficiently assembled and stored in containers for collection.

(End of clause)

7–1801.2 *Subcontracting.* Insert the clause in 7–1201.8.

7–1802 Clause To Be Used When Applicable.

7–1802.1 *Scope of Contract—Refuse Services.*

(a) Insert the following clause when applicable in refuse services contracts. The clause may be modified to meet local conditions and requirements.

SCOPE OF CONTRACT (1971 NOV)

(a) The Contractor shall furnish all labor, tools, materials, equipment and supervision necessary for the performance of all operations incidental to the collection and disposal of refuse generated at the installation or area defined in the Schedule.

(b) The Contractor's duties and responsibilities, in addition to those specified in the Schedule, are as follows:

(1) *Removal and Disposal.* All refuse in the containers shall be collected on those days as indicated in the Schedule. All other loose refuse, such as cardboard boxes, cartons, bundled and

tied newspapers and magazines, tree branches and packing containers, etc., which are placed adjacent to the containers shall be picked up by the Contractor. Any spillage of refuse in course of the handling operation shall be cleaned up immediately by the Contractor. Refuse containers when emptied shall be returned to their original position with the lids replaced thereon. All refuse collected shall be hauled in suitable vehicles and disposed of in the manner elsewhere provided herein.

(2) *Compliance with Laws and Regulations*. The Contractor shall comply with all laws, ordinances, statutes and regulations pertaining to the collection, transportation, and disposal of refuse and shall obtain such permits, licenses or other authorizations as may be required.

(End of clause)

(b) The following paragraph shall be added as paragraph (c) to the clause in (a) above for requirements contracts.

(c) (1) Accurate operating records shall be kept for each truck or other vehicle on such forms as may be provided by the Contracting Officer and the records shall show total collections in terms of either cubic yards, tons or receptacles as may be determined by the Contracting Officer.

(2) The reports shall show the number of loads, the number of cubic yards per load, tons of refuse per load, or receptacles per load on the truck prior to final disposal. The report shall be certified by the ....* and the authorized representative of the Contractor. If the unit of measure for payment is expressed in tons, each daily report shall be accompanied by a certified weight certificate for each truck load, indicating both the weight of the vehicle empty and the weight of the vehicle loaded. One copy of each report shall be retained by the Contractor and the original shall be retained by the Contracting Officer.

(3) The Contractor shall furnish such reports relating to labor statistics as the Contracting Officer may direct. (1971 NOV).

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*Identify the Government representative who will be responsible for certifying as to the accuracy of the report.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

Part 19—Service Contracts

7-1900 Scope of Part. This Part sets forth uniform contract clauses for service contracts as defined in 7-1901.

7-1901 Applicability.

(a) As used throughout this Part, the term "*service contract*" means any contract entered into either by formal advertising or negotiation which calls directly for a contractor's time and effort rather than for a concrete end product. See 22-101(a).

(b) Service contracts are generally found in areas involving the following:

(i) maintenance, overhaul, repair, servicing, rehabilitation, salvage, and modernization or modification of supplies, systems and equipment;
(ii) maintenance, repair, rehabilitation, and modification of real property;
(iii) installation of equipment obtained under separate contract;
(iv) operation of Government-owned equipment, facilities, and systems;
(v) engineering and technical services;
(vi) housekeeping and base services;
(vii) transportation and related services;
(viii) training and education;
(ix) photographic, printing and publication services;
(x) mortuary services;
(xi) test services;
(xii) data processing;
(xiii) warehousing; and
(xiv) stevedoring.

(c) Clauses applicable to service contracts in general appear in this part. Additional clauses for special types of service contracts appear in other parts of this section. "*Service contracts*," as used herein, does not include purchase orders (but see 7-1903.12 and 7-1903.13), short form negotiated supply and service contracts (see 16-102.2(c)), letter contracts (but see 7-802 and 3-408(a)), notices of award, or supplemental agreements which do not effect new procurement. This term does not include contracts for construction of buildings, bridges, roads, or other kinds of real property, contracts for architect or engineer services, contracts for experimental, developmental or research work, contracts for facilities provided by the Government under facilities contracts as defined in 7-701 and Section XIII, or any other contracts for which these clauses are not appropriate. However, there are service contracts in which performance involves construction, research and development, or other specified factors. In such cases, see the particular parts of this section containing additional applicable clauses. When a contract is partly a firm fixed price contract and partly a fixed price incentive contract, the clauses required for both types of contracts shall be included. When any provision is applicable only to firm fixed price items, or only to items subject to incentive price revision, such provision shall be so labeled.

7-1902 Required Clauses for Fixed Price Service Contracts. The following clauses shall be inserted in all fixed price service contracts, unless otherwise provided elsewhere in this section for specific types of services.

7-1902.1 *Definitions*. In accordance with 7-103.1, insert the clause therein.

7-1902.2 *Changes.* Insert the following clause in all fixed price service contracts except stevedoring contracts. (See Part 10.)

CHANGES (1971 NOV)

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in the definition of services to be performed, and the time (*i.e.*, hours of the day, days of the week, etc.) and place of performance thereof. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change, *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(End of clause)

In the foregoing clause, the period of "30 days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29) and the audit clause required by 7-104.41.

7-1902.3 *Extras.* Insert the clause in 7-103.3.

7-1902.4 *Inspection of Services.*

INSPECTION OF SERVICES (1971 NOV)

(a) All services (which term throughout this clause includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and test by the Government, to the extent practicable at all times and places during the term of the contract. All inspections by the Government shall be made in such a manner as not to unduly delay the work.

(b) If any services performed hereunder are not in conformity with the requirements of this contract, the Government shall have the right to require the Contractor to perform the services again in conformity with the requirements of the contract, at no additional increase in total contract amount. When the services to be performed are of such a nature that the defect cannot be corrected by reperformance of the services, the Government shall have the right to (i) require the Contractor to immediately take all necessary steps to ensure future performance of the services in conformity with the requirements of the contract; and (ii) reduce the contract price to reflect the reduced value of the services performed. In the event the Contractor fails promptly to perform the services again or to take necessary steps to insure future performance of the services in conformity with the requirements of the contract, the Government shall have the right to either (i) by contract or otherwise have the services performed in conformity with the contract requirements and charge to the Contractor any cost occasioned to the Government that is directly related to the performance of such services; or (ii) terminate this contract for default as provided in the clause of this contract entitled "Default."

(c) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services to be performed hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the term of this contract and for such longer period as may be specified elsewhere in this contract.

(End of clause)

7-1902.5 *Payments*. In accordance with 7-103.7, insert the clause therein.

7-1902.6 *Assignment of Claims*. In accordance with 7-103.8, insert the clause therein.

7-1902.7 *Federal, State, Local and Foreign Taxes*. In accordance with 7-103.10, insert the appropriate clause therein.

7-1902.8 *Default*. In accordance with 7-103.11, insert the clause therein.

7-1902.9 *Disputes*. In accordance with 7-103.12, insert the appropriate clause therein.

7-1902.10 *Reserved.*

7-1902.11 *Discounts*.

DISCOUNTS (1971 NOV)

In connection with any discount offered, time will be computed from the date of completion of performance of the services or from the date correct invoice or voucher is received in the office specified by the Government, if the latter is later than date of completion of performance. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check.

(End of clause)

When SF 33A is used, the above clause will be substituted for subparagraph (b) of clause 9, *Discounts* (see 16-101.1(ii)).

7-1902.12 *Contract Work Hours and Safety Standards Act—Overtime Compensation*. In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-1902.13 *Equal Opportunity*. In accordance with 12-807.1, insert the applicable clause in 7-103.18.

7-1902.14 *Officials Not To Benefit*. Insert the clause in 7-103.19.

7-1902.15 *Covenant Against Contingent Fees*. Insert the clause in 7-103.20.

7-1902.16 *Termination for Convenience of the Government*.

(a) Except in stevedoring contracts and except as provided in (b) below, insert the appropriate clause in 7-103.21.

(b) If it has been reasonably determined that termination for convenience would not result in a claim for anything but the services rendered, the following clause may be used, regardless of contract amount, in lieu of any other termination for convenience clause. See 8-705.1(b).

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1968 FEB)

The Contracting Officer, by written notice may terminate this contract, in whole or in part, when it is in the best interests of the Government. If this contract is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

(End of clause)

7-1902.17 *Authorization and Consent.* Except in contracts for stevedoring services and in accordance with 7-103.22, insert the clause therein.

7-1902.18 *Notice and Assistance Regarding Patent and Copyright Infringement.* Except in contracts for stevedoring services and in accordance with 7-103.23, insert the clause therein.

7-1902.19 *Reserved.*

7-1902.20 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1902.21 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-1902.22 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-1902.23 *Time of Delivery.* Insert a delivery clause in accordance with 7-104.92.

7-1902.24 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

7-1902.25 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-1903 Clauses To Be Used When Applicable in Fixed-Price Service Contracts.

7-1903.1 *Clauses for Fixed-Price Service Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses therein in addition to the clause in 7-104.3.

7-1903.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the appropriate clause(s) in 7-104.2.

7-1903.3 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-1903.4 *Notice of Radioactive Materials.* In accordance with 7-104.80, insert the clause therein.

7-1903.5 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-1903.6 *Additional Bond Security.* If the contract will require the contractor to furnish a bond in connection therewith, insert the clause in 7-103.9.

7-1903.7 *Reporting and Refund of Royalties.* In accordance with 7-104.8, insert the appropriate clause or clauses therein.

7-1903.8 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1903.9 *Ground and Flight Risk.* In accordance with 10-404, insert the clause in 7-104.10.

7-1903.10 *Military Security Requirements.* In accordance with 7-104.12, insert the clause therein.

7-1903.11 *Utilization of Small Business and Small Disadvantaged Business Concerns.* In accordance with 1-707.3, insert one or more of the clauses in 7-104.14.

7-1903.12 *Examination of Records by Comptroller General.* Pursuant to 10 U.S.C. 2313(b), the clause in 7-104.15 shall be inserted in all negotiated contracts in excess of $10,000 including contracts awarded under a total (Small Business Restricted Advertising) or partial set aside, except (i) as provided in 6-704 and 6-1001; and (ii) in contracts or purchase orders for public utility services at rates not in excess of those established for uniform applicability to the general public or at such rates plus reasonable connection charges incident to such services.

7-1903.13 *Gratuities.* Insert the clause in 7-104.16 except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense Appropriation Acts.

7-1903.14 *Convict Labor.* In accordance with 7-104.17, insert the clause therein.

7-1903.15 *Ocean Transport of Government Owned Supplies.* In accordance with 7-104.19(a), insert the clause therein.

7-1903.16 *Utilization of Labor Surplus Area Concerns.* In accordance with 7-104.20, insert the appropriate clause or clauses therein.

7-1903.17 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-1903.18 *Subcontracts.* In accordance with 23-201.1, insert the appropriate clause in 7-104.23.

7-1903.19 *Government Property.* In accordance with 7-104.24, insert the appropriate clause therein.

7-1903.20 *Special Tooling.* In accordance with 7-104.25, insert the clause therein.

7-1903.21 *Special Test Equipment.* In accordance with 7-104.26, insert the clause therein.

7-1903.22 *Options.* When it is intended to extend the services described in the schedule, insert a clause substantially as follows:

OPTION TO EXTEND SERVICES

The Government may require the Contractor to continue to perform any or all items of services under this contract within the limits stated in the Schedule. The Contracting Officer may exercise this option, at any time within the period specified in the Schedule, by giving written notice to the Contractor. The rates set forth in the Schedule shall apply to any extension made pursuant to this option provision unless provision for appropriate price adjustment has been made elsewhere in this contract.

(End of clause)

Other examples of option clauses appear in 7-104.27. See Section I, Part 15, for specific instructions, prohibitions and procedures.

7-1903.23 *Quality Program.* In accordance with 7-104.28, insert the clause therein.

7-1903.24 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-1903.25 *Advance Payments.* in accordance with Appendix E, Part 4, insert the appropriate clause in 7-104.34.

7-1903.26 *Progress Payments.* In accordance with E-510.1, insert the appropriate clause in 7-104.35.

7-1903.27 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-1903.28 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-1903.29 *Audit by Department of Defense.* In accordance with 7-104.41, insert the clause therein.

7-1903.30 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-1903.31 *Reserved.*

7-1903.32 *Communist Areas.* In accordance with 7-103.15, insert the clause therein.

7-1903.33 *Multiyear Contracting.* In accordance with 1-322.5, 1-322.6(c), or 1-322.7(c), insert the appropriate clause set forth below.

(a) *Limitation of Price and Contractor Obligations.* (See 7-104.47(a)).

(b) *Cancellation of Items—Service Contracts.* Insert the following clause.

CANCELLATION OF ITEMS—SERVICE CONTRACTS (1974 APR)

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multi-Year Procurement."

(b) As used herein, the term "cancellation" means that the Government is canceling, pursuant to this clause, its Program Year requirements for items as set forth in the Schedule for all Program Years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur only if, by the date or within the time period specified in the Schedule, or such further time as may be agreed to, the Contracting Officer (i) notifies the Contractor that funds will not be available for contract performance for any subsequent Program Year; or (ii) fails to notify the Contractor that funds have been made available for performance of the Program Year requirement for the succeeding Program Year.

(c) Except for cancellation pursuant to this clause or for termination pursuant to the "Default" clause, any reduction by the Contracting Officer in the quantities called for under this contract shall be considered a termination in accordance with the "Termination for Convenience of the Government" clause of this contract.

(d) In the event of cancellation pursuant to this clause, the Contractor will be paid, as consideration therefor, a cancellation charge not to exceed the cancellation ceiling described and separately set forth in the Schedule as being applicable at the time of cancellation.

(e) The cancellation charge is intended to cover only expenses incurred by the Prime Contractor or his subcontractor which would have been equitably amortized in the unit prices for the entire multi-year contract period, but which, because of the cancellation are not so amortized. The cancellation charge shall be computed and the claim therefor made as would be applicable under the "Termination for Convenience of the Government" clause of this contract. The Contractor shall submit the claim promptly but in no event later than one year (i) from the date of notification of the nonavailability of funds, if issued pursuant to paragraph (b)(i), or (ii) from the date specified in the schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. The claim may include reasonable start-up and other nonrecurring costs such as plant or equipment relocation costs; the costs of special tooling and special equipment; allocable portions of the costs of facilities acquired or established for the conduct of the work, *provided* such costs have not been charged to the contract through overhead, or otherwise depreciated, and to the extent that it is impracticable for the Contractor to utilize such facilities in the conduct of his commercial work; costs incurred for the assembly training and transportation of a specialized work force to and from the job site; and costs not amortized by the level contract unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning. The claim shall not include any amount for:

(i) labor, material, or other expenses incurred by the Contractor or its subcontractor for performance of the canceled work;

(ii) any item of cost for which payment has already been made to the Contractor;

(iii) anticipated profit on the canceled work;

(iv) the remaining useful commercial life of facilities. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(f) If this contract includes an option to increase quantities in which the period for exercise of the option is limited to the date set forth in the contract for notifying the Contractor that funds are available for the requirement of the next succeeding program year, the Contractor agrees not to include in the price for option quantities any costs of a startup or nonrecurring nature, which costs have been fully provided for in the unit prices of the firm quantities of the Program Years, and further agrees that the prices offered for option quantities will reflect only those recurring costs, and a reasonable profit thereon, which are necessary to furnish the additional option quantities. Therefore, any quantities added to the original contract quantities through exercise of the Government option in the "Option to Increase Quantities" clause of this contract shall not be subtracted from what would otherwise be considered the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

(c) *Limitation of Price and Contractor Obligations—Service Contracts Under Public Law 90-378 or 91-142.* In accordance with 1-322.6 and 1-322.7, insert the following clause.

LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS—SERVICE CONTRACTS UNDER PUBLIC LAW 90-378 OR 91-142 (1976 JUL)

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multi-year Procurement."

(b) Funds are available for performance of this contract in the amount specifically described in the Schedule, as available for contract performance. The funds so described at the time of award are not available for contract performance required by and described in the Schedule for any fiscal year (1 October -- 30 September) other than the first fiscal year. Upon availability to the Contracting Officer of funds for performance of requirements in the next succeeding fiscal year, the Contracting Officer shall notify the Contractor in writing of the amount of funds available for contract performance in the next succeeding fiscal year and the contract shall be modified accordingly. This procedure shall apply for each successive fiscal year.

(c) The Government is not obligated to the Contractor for contract performance in any monetary amount in excess of that described in the Schedule or modifications thereto, as available for contract performance in the applicable fiscal year.

(d) The Contractor is not obligated to incur costs for the performance required for any fiscal year after the first unless and until he has been notified in writing by the Contracting Officer of the availability of funds in accordance with paragraph (b) of this clause. If so notified, the Contractor's obligation shall be increased only to the extent contract performance is required for the fiscal year for which funds have been made available.

(e) In the event of termination pursuant to the "Termination for Convenience of the Government" clause of this contract, the terms "total contract price" as used in that clause refers to the amount available for performance of this contract, as provided for in this clause for the current fiscal year including the applicable amount established as the cancellation ceiling, and the term "work under the contract" as used in that clause refers to the work under fiscal year requirements for which funds have been made available. In the event of termination for default, the Government's rights under this contract shall apply to the entire multi-year requirements.

(f) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract as a result of a clause other than this clause (*e.g.*, exercise of an option for increased quantities or the "Changes" clause) shall not constitute the notification contemplated by paragraph (b) of this clause.

(End of clause)

(d) *Cancellation of Items—Service Contracts under Public Law 90-378 or 91-142.* In accordance with 1-322.6 and 1-322.7, insert the following clause.

CANCELLATION OF ITEMS—SERVICE CONTRACTS UNDER PUBLIC LAW 90-378 OR 91-142 (1976 JUL)

(a) This clause applies only in the event this contract is awarded on the alternative basis for award described in the Schedule as "Multi-Year Procurement."

(b) As used herein, the term "cancellation" means that the Government is canceling, pursuant to this clause, its requirements for items as set forth in the Schedule for all fiscal years (1 October — 30 September) subsequent to that in which notice of cancellation is provided. Such cancellation shall occur only if the Contracting Officer (i) notifies the Contractor that funds will not be available for contract performance for the next succeeding fiscal year and any subsequent fiscal year; or (ii) fails to notify the Contractor prior to beginning of the next succeeding fiscal year that funds have been made available for performance in the succeeding fiscal year.

(c) Except for cancellation pursuant to this clause or for termination pursuant to the "Default" clause, any reduction by the Contracting Officer in the quantities called for under this contract shall be considered a termination in accordance with the "Termination for Convenience of the Government" clause of this contract.

(d) In the event of cancellation pursuant to this clause, the Contractor will be paid, as consideration therefor, a cancellation charge not to exceed the cancellation ceiling described and separately set forth in the Schedule as being applicable at the time of cancellation.

(e) The cancellation charge is intended to cover only expenses incurred by the Prime Contractor or his subcontractor which would have been equitably amortized in the unit prices for the entire multi-year contract period, but which, because of the cancellation are not so amortized. The cancellation charge shall be computed and the claim therefor made as would be applicable under the "Termination for Convenience of the Government" clause of this contract. The claim may include reasonable startup and other nonrecurring costs such as plant or equipment relocation costs; the costs of special tooling and special equipment; allocable portions of the costs of facilities acquired or established for the conduct of the work, *provided* such costs have not been charged to the contract through overhead, or otherwise depreciated, and to the extent that it is impracticable for the Contractor to utilize such facilities in the conduct of his commercial work; costs incurred for the assembly, training, and transportation of a specialized work force to and from the job site; and costs not amortized by the level contract unit price solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning. The claim shall not include any amount for:

- (i) labor, material, or other expenses incurred by the Contractor or its subcontractor for performance of the canceled work;
- (ii) any item of cost for which payment has already been made to the Contractor;
- (iii) anticipated profit on the canceled work;
- (iv) the remaining useful commercial life of facilities. Useful commercial life, for this purpose, means the commercial utility of the facilities rather than the physical life thereof, with due consideration given to such factors as location of facilities, specialized nature thereof, and obsolescence.

(End of clause)

7-1903.34 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-1903.35 *United States Products and Services (Balance of Payments Program).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-1903.36 *Identification of Expenditures in the United States.* In accordance with 7-104.58, insert the clause therein.

7-1903.37 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-1903.38 *Protection of Government Buildings, Equipment and Vegetation.* In accordance with 7-104.63, insert the clause therein.

7-1903.39 *Insurance.* In accordance with 10-405, insert the clause in 7-104.65.

7-1903.40 *Acquisition and Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-1903.41 *Service Contract Act of 1965, as Amended.*

(a) *Service Contracts in Excess of $2,500.* The following clause shall be included in each contract in excess of $2,500, the principal purpose of which is to furnish services in the United States (see (p)(8) of the clause below) through use of service employees and which is not otherwise exempted by the provisions of the Service Contract Act of 1965, as amended, the clause below, and Part 10 of Section XII.

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1979 SEP)

This contract, to the extent that it is of the character to which the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) (hereafter referred to as the "Act"), applies, is subject to the following provisions of the Act and to the regulations of the Secretary of Labor thereunder (29 CFR Part 4).

(a) *Compensation.* Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid no less than the minimum monetary wage and shall be furnished fringe benefits determined by the Secretary of Labor or the Secretary's authorized representative, as specified in any attachment to this contract. If there is such an attachment, any class of service employees which is not listed therein, but which is to be employed under this contract, shall be classified by the Contractor so as to provide a reasonable relationship between such classifications and those listed in the attachment and shall be paid such monetary wages and furnished such fringe benefits as are determined by agreement of the interested parties, who shall be deemed to be the contracting agency, the Contractor, and the employees who will perform on the contract or their representatives. If the interested parties do not agree on a classification or reclassification which is, in fact, conformable, the Contracting Officer shall submit the question, together with recommendation, to the Administrator of the Wage and Hour Division, Employment Standards Administration, of the Department of Labor for final determination. Failure to pay such employees the compensation agreed upon by the interested parties or finally determined by the Administrator or the Administrator's authorized representative shall be a violation of this contract. No employee engaged in performing work on this contract shall be paid, in any event, less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(b) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor can only discharge the obligation to furnish fringe benefits specified in the attachment or conformed thereto either by (i) furnishing any equivalent combinations of fringe benefits, or (ii) making equivalent or differential payments in cash pursuant to the applicable rules set forth in subparts B and C of 29 CFR Part 4.

(c) *Adjustment of Compensation.* If, as authorized pursuant to section 4(d) of the Act, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and no less than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration, Department of Labor, as provided in the Act.

(d) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any employees performing work under this contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(e) *Successorship.* If this contract succeeds a contract subject to the Act, under which substantially the same services were furnished and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, then in the absence of a minimum wage attachment for this contract neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would be entitled if employed under the predecessor contract, including accrued prospective wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1c(b) apply or unless the Secretary of Labor or the Secretary's representative (i) determines that the collective bargaining agreement applicable to service employees employed under the predessor contract was not entered into as a result of arms-length negotiations, or (ii) after a hearing, as provided in 29 CFR 4.10, finds that the wages and fringe benefits provided for in such agreement are substantially at variance with those which previal for services of a character similar in the locality.

(f) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post a notice of such wages and benefits in a prominent and accessible place at the worksite, using such poster as may be provided by the Department of Labor.

(g) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor that are unsanitary or dangerous to the health or safety of service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(h) *Records.* The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, records containing the information specified below for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor.

(1) Employee's name and address.

(2) Employee's work classification or classifications, rate or rates of monetary wages and fringe benefits provided, rates or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation.

(3) Employee's daily and weekly hours worked.

(4) Any deductions, rebates, or refunds from employee's total daily or weekly compensation.

(5) A list of monetary wages and fringe benefits for those classes of service employees not included in the minimum wage attachment to this contract, but for which

such wage rates or fringe benefits have been determined by the Administrator or the Administrator's authorized representative, pursuant to the labor standards in paragraph (a) of this clause. A copy of the report required by paragraph (m) of this clause shall be deemed to be such a list.

(i) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as the Contracting Officer, or an appropriate officer of the Labor Department, decides may be necessary to pay underpaid employees. Additionally, any failure to comply with the requirements of this clause relating to the Act may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(j) *Subcontractors.* The Contractor agrees to insert this clause relating to the Act in all subcontracts. The term "Contractor," as used in this clause, in any subcontract shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

(k) *Service Employee.* As used in this clause, relating to the Act, the term "service employee" means any person employed in connection with a contract entered into by the United States and not exempted under section 7 of the Act (41 U.S.C. 356), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR Part 541 and in any subsequent revisions of these regulations); and shall include all such persons, regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(l) *Federal Wage Board (Blue Collar) and General Schedule (White Collar) Wages and Fringe Benefits Applicable to Service Employee Classifications.* Classes of service employees expected to be employed under this contract with the Government would be subject, if employed by the contracting agency, to the provisions of 5 U.S.C 5341 and 5332 and, if so employed, would be paid the rates of wages and fringe benefits stated in the solicitation for this contract.

(m) *Contractor's Report.* If there is a wage determination attachment to this contract and one or more classes of service employees that are not listed thereon are to be employed under the contract, the Contractor shall report to the Contracting Officer the monetary wages to be paid and the fringe benefits to be provided each such class of service employee. This report shall be made promptly, as soon as such compensation has been determined, as provided in paragraph (a) of this clause.

(n) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement that is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer. The Prime Contractor also shall provide full information as to application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract in the case of collective bargaining agreements effective at such time, and, in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, the agreements shall be reported promptly after negotiation thereof.

(o) *Regulations Incorporated by Reference.* All interpretations of the Act expressed in subpart C of 29 CFR 29 CFR Part 4 are hereby incorporated by reference in this contract.

(p) *Exemptions and Limitations.* This clause shall not apply to the following:

(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting or decorating of public buildings or public works.

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect, or where such carriage is subject to rates covered by section 22 of the Interstate Commerce Act;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals; and

(7) Any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations;

(8) Any services to be furnished outside the United States. For geographic purposes, the "United States" is defined in section 8(d) of the Act to include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, the Outer Continental Shelf Lands, as defined in Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island. It does not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(9) Any of the following contracts exempted from all provisions of the Act, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(i) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom; and

(ii) Any contract entered by the U.S. Postal Service with an individual owner-operator for mail service where it is not contemplated at the time the contract is made that such owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness or accident.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (a) through (o) of this clause relating to the Act, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act (prior to its amendment by Public Law 92-473), found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) (i) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator of the Wage and Hour Division of the Department of Labor (29 CFR Parts 520, 521, 524, and 525).

(ii) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), and applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(iii) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(2) An employee engaged in an occupation in which the employee customarily and regularly receives more than $20 a month in tips may have the amount of such tips credited

by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with the regulations in 29 CFR Part 531: *Provided, however,* That the amount of such credit not exceed one half of the minimum rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Note: This paragraph may not be operable where section 4(c) of the Act applies.

(End of clause)

(b) *Service Contracts Not in Excess of $2,500.* Insert the following clause in every contract not in excess of $2,500 that has as its principal purpose the furnishing of services through the use of service employees, except those transactions identified in paragraph (p) of the clause in (a) above.

SERVICE CONTRACT ACT OF 1965, AS AMENDED (1979 SEP)

Except to the extent that an exemption, variation, or tolerance would apply, pursuant to 29 CFR 4.6, if this were a contract in excess of $2,500, the Contractor and any subcontractor hereunder shall pay all employees engaged in performing work on the contract no less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. All regulations and interpretations of the Service Contract Act of 1965, as amended, expressed in 29 CFR Part 4, are hereby incorporated by reference in this contract.

(End of clause)

(c) *Basic Ordering Agreements and Blanket Purchase Agreements.* In the case of the basic ordering agreement or blanket purchase agreement, the dollar amount thereof for purposes of (a) and (b) above shall be the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement. If an agreement continues or is extended, such estimate shall be made annually for each year after the first, and the agreement modified accordingly.

(d) *Price Adjustment Clauses.*

(1) In fixed price-type service contracts with options to renew and fixed price-type multiyear service contracts which contain the clause in (a) above, insert the Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiyear and Option Contracts) clause in 7-1905(b).

(2) In fixed price service contracts other than those covered by (1) above, which contain the clause in (a) above, insert the Fair Labor Standards Act and Service Contract Act—Price Adjustment clause in 7-1905(c).

(e) *Potential Application Clause.* The following clause is to be included in solicitations and resulting contracts for overhaul and modification of equipment, which are considered by the contracting officer to be subject to the Walsh-Healy Public Contracts Act rather than the Service Contract Act, as amended. In paragraph (c) of the clause, "60 days" may be substituted for "30 days."

POTENTIAL APPLICATION OF THE SERVICE CONTRACT ACT, AS AMENDED (FIXED PRICE) (1979 SEP)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) In the event that during the performance of this contract, it is determined by appropriate authority that the provisions of the Service Contract Act of 1965, as amended, apply to any of the work covered by this contract, the Contracting Officer may unilaterally implement such determination by requiring payment of the appropriate wage and fringe benefit scale, and the Contractor agrees to comply with such implementation. In the event that compliance with the Contracting Officer's direction results in any increase in the labor rates paid under this contract, the Contractor agrees to enter promptly into negotiations to reflect such an increase. Such contract adjustment shall be limited to increases in wages or fringe benefits affected by the above determination, and the concomitant increases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for profit, or for general administrative costs or overhead.

(c) Within 30 days of receipt of the applicable wage and fringe benefit scale, the Contractor will submit a proposal for any contract price change to the Contracting Officer. With the submission of his proposal for adjustment, the Contractor shall also submit, if requested by the Government, all necessary and pertinent data used by him in preparing the proposal upon which he received the original award of this contract. The Contracting Officer or his authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor until the expiration of 3 years after final payment under this contract.

(d) This clause shall be deemed to constitute the exclusive contractual remedy of the Contractor for adjustment arising out of the decision to apply the Service Contract Act, as amended, to the work covered by this contract. Failure of the parties to reach an understanding as to such adjustment shall be considered a dispute subject to the Disputes clause of the contract.

(End of clause)

7-1903.42 *Patent Rights*. When experimental, developmental, or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1903.43 *Government Delay of Work.* The clause in 7-104.77 may be inserted.

7-1903.44 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1903.45 *Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.* In accordance with 7-104.81, insert the clause therein.

7-1903.46 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1903.47 *Payment of Interest on Contractor's Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1903.48 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1903.49 *Availability of Funds.* In accordance with 1-318, insert one of the clauses in 7-104.91.

7-1903.50 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1903.51 *Value Engineering.*

(a) In accordance with 1-1702, insert the appropriate clauses in 7-104.44 modified, as required, to suit the particular procurement involved.

(b) Insert additional paragraph as follows:

( ) Contractor proposals which eliminate, modify or substitute new procedures for contractually required work procedures shall qualify for instant contract savings sharing. If this is a time and material or labor-hour contract, the "effect of the proposal on the Contractor's cost of performance," for purposes of the instant contract sharing paragraph (e)(1) of the clause, shall be determined by (i) multiplying the time per item saved by the elimination, modification, or substitution by the labor-hour rate agreed upon for the workers involved, and then (ii) multiplying the result by the number of items over which the task has been deleted, and (iii) taking into account in the usual manner the Contractor's cost of developing the proposal and of implementing the change, and increased Government costs related to implementing the proposal. (The result under (i) would be the unit cost reduction for purposes of determining future acquisition savings.)

(End of clause paragraph)

7-1903.52 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1903.53 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1903.54 *Privacy Act.* In accordance with 1-327.1, insert the clause in 7-104.96.

7-1903.55 *Preference for Domestic Specialty Metals.* In accordance with 7-104.93, insert the applicable clause therein.

7-1903.56 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1903.57 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1903.58 *Reserved.*

7-1903.59 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1904 Additional Clauses for Use in Fixed-Price Service Contracts. The following clauses may be inserted in fixed price service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1904.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-1904.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-1904.3 *Stop Work Orders.* In accordance with 7-105.3, the clause therein may be inserted.

7-1904.4 *Liquidated Damages.* In accordance with 1-310, where a liquidated damages provision is to be used in a service contract, the provision in 7-105.5 shall be inserted as paragraph (f) of the Default clause (see 7-1902.8) and the present paragraph (f) of that clause shall be redesignated (g).

7-1904.5 *Warranties.*

(a) *Use of Clauses.* A decision on whether to include a warranty clause shall be made after careful consideration of the policy and guidelines in 1-324.

(b) In addition to the clauses in 7-105.7, the following is an example for use in fixed-price type services contracts:

WARRANTY OF SERVICES

Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any such defect or nonconformance to the Contractor *........................ Such notice shall state either (i) that the Contractor shall correct or re-perform any defective or nonconforming services, or (ii) that the Government does not require correction or re-performance. If the Contractor is required to correct or re-perform, it shall be at no cost to the Government, and any services corrected or re-performed by the Contractor pursuant to this clause shall be subject to all provisions of this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or re-perform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby or obtain an equitable adjustment in the contract price. If the Government does not require correction or re-performance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

* Insert the specific period of time in which notice shall be given to the Contractor, *e.g.*, "within ....(insert period of time) from the date of acceptance by the Government," "within ....(insert number of hours) of use by the Government," or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or periods of time.

7-1905 Price Adjustment Clauses.

(a) When fluctuations in costs not provided for in (b) and (c) below are likely to be included as contingencies in the contract price, the contracting officer may include a provision for economic price adjustment authorized by 3-404.3(c). The clauses set forth in (b) and (c) below provide coverage for situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination prior either to exercise of a contract option, or to extension of a multi-year contract into a new program year. Care should be taken to insure that an economic price adjustment clause authorized by this paragraph (a) does not conflict with, or overlap, the clauses set forth in (b) or (c).

(b) The following clause shall be inserted in fixed price type multi-year service contracts (see 1-322) and fixed price type service contracts with options to renew which contain the clause in 7-1903.41(a). It is to be noted that the adjustments under (c)(ii) and (iii) of the clause may be applicable to the base period as well as to subsequent periods.

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT — PRICE ADJUSTMENT (MULTI YEAR AND OPTION CONTRACTS) (1979 SEP)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) The minimum prevailing wage determination, including fringe benefits, issued pursuant to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.), by the Administrator, Wage and Hour Division, U.S. Department of Labor, current at the beginning of each renewal option period, shall apply to any renewal of this contract. When no such determination has been made as applied to this contract, then the Federal minimum wage, as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), current at the begining of each renewal option period, shall apply to any renewal of this contract.

(c) When, as a result of (i) the Department of Labor determination of minimum prevailing wages and fringe benefits applicable at the beginning of the renewal option period, or (ii) an increased or decreased wage determination otherwise applied to the contract by operation of law, or (iii) an amendment to the Fair Labor Standards Act enacted subsequent to award of this contract, affecting the minimum wage, which becomes applicable to this contract under law, the Contractor increases or decreases wages or fringe benefits of employees working on this contract to comply therewith, the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within thirty (30) days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(e) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under the contract have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor.

(End of clause)

(c) The following clause shall be inserted in fixed-price service contracts, other than those covered by (b) above, which contain the clause in 7-1903.41(a).

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (1979 SEP)

(a) The Contractor warrants that the prices set forth in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(b) When, as a result of an increased or decreased wage determination applied to this contract by operation of law or an amendment to the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), enacted subsequent to award of this contract, affecting the minimum wage, which becomes applicable to this contract under law, the Contractor increases or decreases wages or fringe benefits of employees working on this contract to comply therewith the contract price or contract unit price labor rates will be adjusted to reflect such increases or decreases. Any such adjustment will be limited to increases or decreases in wages or fringe benefits as described above, and the concomitant increases or decreases in social security and unemployment taxes and workmen's compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(c) The Contractor shall notify the Contracting Officer of any increases claimed under this clause within thirty (30) days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. In the case of any decrease under this clause, the Contractor shall promptly notify the Contracting Officer of such decrease but nothing herein shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof, which may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. Pending agreement on or determination of, any such adjustment and its effective date, the Contractor shall continue performance.

(d) The Contracting Officer or his authorized representative shall, until the expiration of three (3) years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor.

(End of clause)

7-1906 Incentive Price Revision Clauses. When it is determined in accordance with Section III, Part 4, to provide for incentive price revision, the applicable clause in 7-108 may be included.

7-1907 Price Redetermination Clauses. When it is determined in accordance with 3-404.5 or 3-404.6 to use a fixed price contract providing for redetermination of price, the applicable clause in 7-109 may be included.

7-1908 Clauses for Contracts Involving Furnishing of Supplies. In service contracts which involve the furnishing of supplies, the following clauses shall be included in addition to those prescribed in 7-1902. In addition, applicable clauses in 7-104, 7-105 and 7-106 shall be included. Any clause applicable only to services or only to supplies shall be so labeled.

Changes clause in 7-103.2;
Variation of Quantity clause in 7-103.4;
Inspection clause in 7-103.5;
Title and Risk of Loss clause in 7-103.6;
Discounts clause in 7-103.14;
Walsh-Healey Public Contracts Act clause in 7-103.17.

7-1909 Required Clauses for Cost Reimbursement Type Service Contracts. The following clauses shall be included in all cost reimbursement type service contracts unless otherwise provided elsewhere in this section for specific types of services.

7-1909.1 *Definitions*. In accordance with 7-103.1, insert the clause therein.

7-1909.2 *Changes*.

CHANGES (1971 NOV)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in the definition of services and tasks to be performed, and the time (*i.e.*, hours of the day, days of the week, etc.) and place of performance thereof.

(b) If any such changes cause an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(i) in the estimated cost or delivery schedule, or both;
(ii) in the amount of any fixed fee to be paid to the Contractor; and
(iii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly.

Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *provided*, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, except as provided in paragraph (c) below, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) above, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

(End of clause)

In the foregoing clause, the period of "thirty (30) days" within which any claim for adjustment must be asserted may be varied in accordance with Departmental procedures. In accordance with 10 U.S.C. 2306(f), prior to the pricing of any change order that is expected to exceed $100,000, except when the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, the contracting officer shall require the contractor to furnish a Certificate of Current Cost or Pricing Data (see 3-807.6) and shall assure that the contract includes or is modified to include a defective pricing data clause (see 7-104.29).

7-1909.3 *Limitation of Cost or Funds*. In accordance with 7-203.3, insert the appropriate clause therein.

7-1909.4 *Allowable Cost, Fee and Payment*.

(a) Except as provided in (b) below, insert the clause in 7-203.4(a). See additional instructions in 7-203.4(c).

(b) When, pursuant to 3-405.4, incentive revision of the fee in a cost reimbursement service contract is to be provided, insert the clause in 7-203.4(b). See additional instructions in 7-203.4(c).

7-1909.5 *Inspection of Services* (*Cost Reimbursement*).

INSPECTION OF SERVICES—COST REIMBURSEMENT (1971 NOV)

(a) All services (which term throughout this clause includes services performed, material furnished or utilized in the performance of services, and workmanship in the performance of services) shall be subject to inspection and test by the Government, to the extent practicable at all times and places during the term of the contract. All inspections by the Government shall be made in such a manner as not to unduly delay the work.

(b) If any services performed hereunder are not in conformity with the requirements of this contract, the Government shall have the right to require the Contractor to perform the services again, in conformity with the requirements of the contract, without payment of additional fee. When the services to be performed are of such a nature that the defect cannot be corrected by reperformance of the services, the Government shall have the right to (i) require the Contractor to immediately take all necessary steps to ensure future performance of the services in conformity with the requirements of the contract, and (ii) reduce any fee payable under the contract to reflect the reduced value of the services performed. In the event the Contractor fails promptly to perform the services again or to take the necessary steps to ensure future performance of the services in conformity with the requirements of the contract, the Government shall have the right either to (i) by contract or otherwise have the services reperformed in a manner in conformity with the contract requirements and reduce any fee payable under the contract by an amount which is equitable under the circumstances or (ii) terminate this contract for default as provided in the clause of this contract entitled "Termination."

(c) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services to be performed hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

(End of clause)

7-1909.6 *Assignment of Claims.* In accordance with 7-103.8, insert the clause therein.

7-1909.7 *Subcontracts.* In accordance with 7-203.8, insert the clause therein.

7-1909.8 *Utilization of Small Business Concerns.* In accordance with 1-707.3(a) and (b) and 7-104.14, insert one or both of the clauses in 7-104.14.

7-1909.9 *Termination.* Insert the clause in 7-203.10.

7-1909.10 *Excusable Delays.* Insert the clause in 7-203.11.

7-1909.11 *Disputes.* Insert the clause in 7-103.12.

7-1909.12 *Renegotiation.* In accordance with 7-103.13, insert the appropriate clause therein.

7-1909.13 *Contract Work Hours and Safety Standards Act—Overtime Compensation.* In accordance with 12-301, 12-302, and 12-306, insert the clauses in 7-103.16.

7-1909.14 *Equal Opportunity.* In accordance with 12-807.1, insert the appropriate clause in 7-103.18.

7-1909.15 *Officials Not To Benefit.* Insert the clause in 7-103.19.

7-1909.16 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-1909.17 *Government Property (Cost Reimbursement).* In accordance with 7-203.21, insert the clause therein.

7-1909.18 *Insurance—Liability to Third Persons.* Insert the clause in 7-203.22.

7-1909.19 *Authorization and Consent.* In accordance with 9-102.1, insert the clause in 7-103.22.

7-1909.20 *Notice and Assistance Regarding Patent Infringement.* In accordance with 9-104, insert the clause in 7-103.23.

7-1909.21 *Utilization of Labor Surplus Area Concerns.* In accordance with 1-805.3, insert one or both of the clauses in 7-104.20.

7-1909.22 *Payment for Overtime Premiums.* In accordance with 12-102.6, insert the clause in 7-203.27.

7-1909.23 *Competition in Subcontracting.* In accordance with 7-104.40, insert the clause therein.

7-1909.24 *Audit by Department of Defense.* In accordance with 7-104.41, insert the clause therein.

7-1909.25 *Minority Business Enterprises.* In accordance with 1-332, insert the appropriate clause or clauses in 7-104.36.

7-1909.26 *Equal Opportunity Pre-Award Clearance of Subcontracts.* In accordance with 23-201.4, insert the clause in 7-104.22.

7-1909.27 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

7-1909.28 *Affirmative Action for Handicapped Workers.* Insert the clause in 7-103.28.

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7-1909.29 *Clean Air and Water.* In accordance with 1-2302.2, insert the clause in 7-103.29.

7-1909.30 *Notice of Intent to Disallow or Not Recognize Costs.* Insert the clause in 7-203.35.

7-1910 Clauses To Be Used When Applicable in Cost Reimbursement Service Contracts.

7-1910.1 *Clauses for Cost Reimbursement Service Contracts Involving Construction Work.*

(a) In accordance with 12-106 and 18-703, insert the clauses in 7-602.23.

(b) In accordance with 7-602.20 and 7-602.24, insert the clauses therein in addition to the clause in 7-104.3.

7-1910.2 *Workmen's Compensation and War Hazard Insurance Overseas.* In accordance with 10-403, insert the clauses in 7-104.2(a) and/or 7-104.2(b) depending on whether all contract employees are subject to the Defense Base Act or whether the Act has been waived as to all or part of the contract employees. Also insert the clause Reimbursement for War Hazard Losses in 7-104.2(c) and the language at 10-502(b) and (c) according to the instructions stated in those paragraphs.

7-1910.3 *Continuity of Services.* When difficulties are anticipated on either the part of the Government or contractors during the transition period from one service contractor to its successor, a clause substantially as follows may be included.

CONTINUITY OF SERVICES

The Contractor recognizes that the services provided by this contract are vital to the Government's overall effort, that continuity thereof must be maintained at a consistently high level without interruption, that upon expiration of this contract a successor—either the Government or another Contractor—may continue these services, that the successor, be it the Government or another Contractor, will need phase-in training, and that the Contractor must give his best efforts and cooperation in order to effect an orderly and efficient transition to a successor.

In view of the above, the Contractor agrees, upon written notification by the Contracting Officer, to provide phase-in, phase-out (PIPO) services for up tc sixty (60)* days after this contract expires. After notification, the Contractor agrees to negotiate in good faith with a successor in determining the nature and extent of the PIPO services, including a mutually acceptable detailed plan for PIPO operations. The plan shall design a training program and specify a date for shifting the responsibility to the successor for each division of work set forth in the plan, and shall be subject to the approval of the Contracting Officer. The Contractor shall provide sufficient experienced personnel during the PIPO period to insure that the services called for by this contract are maintained at a high level of proficiency.

The Contractor shall be reimbursed for all reasonable PIPO costs—those costs accruing within the agreed period after contract expiration which result from PIPO operations—and will receive a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

The Contractor agrees to cooperate with the successor, whether it be the Government or another Contractor, in allowing as many personnel as practicable to remain on the job in order to enhance the continuity and consistency of the services called for by this contract. Toward that end the Contractor agrees to disclose necessary personnel records and to allow its successor to conduct on-site interviews with its employees. If said employees are agreeable to the change and are accepted by the successor, then the Contractor shall release them at a mutually acceptable date and shall negotiate the transfer of their earned fringe benefits to the successor.

(End of clause)

**This limitation may be varied from 30 to 90 days.*

7-1910.4 *Notice to the Government of Labor Disputes.* In accordance with 7-104.4, insert the clause therein.

7-1910.5 *Reserved.*

7-1910.6 *Filing of Patent Applications.* In accordance with 9-106, insert the clause in 7-104.6.

7-1910.7 *Patent Rights.* When experimental, developmental or research work may be performed under the contract, insert the appropriate clause in 7-302.23.

7-1910.8 *Communist Areas.* In accordance with 6-403, insert the clause in 7-103.15.

7-1910.9 *Reporting of Royalties.* In accordance with 9-110, insert the clause in 7-104.8(a).

7-1910.10 *Rights in Data.* In accordance with 7-104.9, insert the appropriate clause, or clauses, therein.

7-1910.11 *Quality Program.* In accordance with 14-304, insert the clause in 7-104.28.

7-1910.12 *Military Security Requirements.* In accordance with 7-104.12(a), insert the clause therein with the modification specified in 7-204.12.

7-1910.13 *Gratuities.* Insert the clause in 7-104.16, except in contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense Appropriation Acts.

7-1910.14 *Limitation on Sales Commissions and Fees for Foreign Governments.* In accordance with 6-1305.6, insert the clause in 7-104.107.

7-1910.15 *Ocean Transport of Government Owned Supplies.* In accordance with 1-1404(a), insert the clause in 7-104.19(a).

7-1910.16 *Limitation on Withholding of Payments.* In accordance with 7-104.21, insert the clause therein.

7-1910.17 *Flight Risks.* In accordance with 10-504, insert the clause in 7-204.21.

7-1910.18 *Taxes.* In accordance with 11-403.2, insert the appropriate clause in 7-204.24.

7-1910.19 *Advance Payments.* When advance payments are to be made in accordance with Appendix E, Part 4, insert the appropriate clauses in 7-104.34.

7-1910.20 *Frequency Authorization.* In accordance with 7-104.61, insert the clause therein.

7-1910.21 *Interest.* In accordance with E-620, insert the clause in 7-104.39.

7-1910.22 *Value Engineering.* In accordance with 1-1702, insert the appropriate clauses in 7-104.44, substituting the clause paragraph (e)(1)(ii) in 7-204.32(b) or (c) for paragraph (e)(1)(ii) of the clause in 7-104.44 and as modified by clause paragraph (k) in 7-1903.51.

7-1910.23 *Price Reduction for Defective Cost or Pricing Data.* In accordance with 7-104.29, insert the appropriate clause therein.

7-1910.24 *Subcontractor Cost and Pricing Data.* In accordance with 7-104.42, insert the appropriate clause therein.

7-1910.25 *Examination of Records by Comptroller General.* In accordance with 7-104.15, insert the clause therein.

7-1910.26 *Special Test Equipment.* Insert the clause in 7-104.26 in negotiated contracts which provide that the contractor will acquire special test equipment for the Government but do not specify the items to be acquired (see 13-306.3).

7-1910.27 *Order of Precedence.* In accordance with 3-501(b)Sec.C(xxxi), insert the clause in 7-2003.41.

7-1910.28 *United States Products and Services (Balance of Payments).* In accordance with 6-806.4, insert the clause in 7-2003.53.

7-1910.29 *Identification of Expenditures in the United States.* In accordance with 6-807, insert the clause in 7-104.58.

7-1910.30 *Use of Excess and Near Excess Currency.* In accordance with 6-1110, insert the clause in 7-104.66.

7-1910.31 *Service Contract Act of 1965.* In accordance with 7-1903.41, insert the appropriate clause therein.

7-1910.32 *Convict Labor.* In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-1910.33 *Safety Precautions for Ammunition and Explosives.* In accordance with 7-104.79, insert the clause therein.

7-1910.34 *Management Systems Requirements.* In accordance with 16-827.1, insert the clause in 7-104.50.

7-1910.35 *Payment of Interest on Contractors' Claims.* In accordance with 1-333, insert the clause in 7-104.82.

7-1910.36 *Cost Accounting Standards.* In accordance with 3-1204, insert the clauses in 7-104.83.

7-1910.37 *Capture and Detention.* In accordance with 10-406, insert the clause in 7-104.94.

7-1910.38 *Buy American Act.* In accordance with 7-104.3, insert the clause therein.

7-1910.39 *Preference for United States Flag Air Carriers.* In accordance with 1-336.1(b), insert the clause in 7-104.95.

7-1910.40 *Exclusionary Policies and Practices of Foreign Governments.* In accordance with 6-1312, insert the clause in 7-104.97.

7-1910.41 *Hazardous Material Identification and Material Safety Data.* In accordance with 1-323.2(b), insert the clause in 7-104.98.

7-1911 Additional Clauses for Use in Cost Reimbursement Service Contracts. The following clauses may be included in cost reimbursement service contracts in accordance with Departmental procedures when it is appropriate to do so.

7-1911.1 *Alterations in Contract.* The clause in 7-105.1(a) may be inserted.

7-1911.2 *Approval of Contract.* The clause in 7-105.2 may be inserted.

7-1911.3 *Options.* Examples of option clauses appear in 7-104.27 and 7-1903.22. See Section I, Part 15, for specific instructions, prohibitions and procedures.

7-1911.4 *Stop Work Orders.* In accordance with 7-205.6, the clause prescribed therein may be inserted.

7-1911.5 *Clauses for Contracts Involving Furnishing of Supplies.* In cost reimbursement service contracts which involve the furnishing of supplies, the following clauses shall be included in addition to those prescribed by 7-1909.

Changes clause in 7-203.2;
Inspection of Supplies and Correction of Defects clause in 7-203.5; and
Walsh-Healey Public Contracts Act clause in 7-103.17.

In addition, applicable clauses in 7-1910 shall be included. Any clause applicable only to supplies or only to services shall be so labeled.

7-1912 Limitation of Liability — Service Contract. In accordance with 1-330, insert the following clause.

LIMITATION OF LIABILITY — SERVICE CONTRACT (1974 APR)

(a) Except to the extent that the Contractor is responsible under this contract for deficiencies in the services required to be performed under this contract, including any materials furnished in conjunction therewith, the contractor shall not be liable, by reason of Contractor's performance of services or delivery of materials under this contract, for loss of or damage to property of the Government occurring after Government acceptance of such services.

(b) The foregoing limitations shall not apply as to loss of or damage to property of the Government caused by willful misconduct or lack of good faith on the part of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who have supervision or direction of:

(i) all or substantially all of the Contractor's business; or

(ii) all or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(iii) a separate and complete major industrial operation in connection with the performance of this contract.

(c) Notwithstanding paragraph (a) above, if the Contractor carries insurance or has established a reserve for self-insurance covering liability for damages or losses to property of the Government through performance of the services or furnishing of materials under this contract, then the Contractor shall be liable to the Government for such damages or losses to property of the Government to the extent of such insurance or reserve for self-insurance.

(d) The substance of this clause, suitably altered to reflect the relationship of the contracting parties, shall be included in any subcontracts hereunder.

(End of clause)

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

PART 20—CONTRACT CLAUSES AND SOLICITATION PROVISIONS

7-2000 Scope of Part. This part sets forth uniform clauses, provisions, notices, statements, etc., for use in solicitations.

7-2001 Reserved.

7-2002 Required Clauses.

7-2002.1 *Contingent Fee.* In accordance with 1-506.1, insert the following clause.

CONTINGENT FEE (1974 APR)

The Offeror/Quoter represents and certifies as part of his proposal/quotation that. (Check all applicable boxes or blocks).

(a) He [ ] has, [ ] has not, employed or retained any company or person (other than a full-time, bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, and (b) he [ ] has, [ ] has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror/quoter) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above, as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee", see Code of Federal Regulations, Title 41, Subpart 1-1.5.)

If the offeror/quoter, by checking the appropriate box provided therefor, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he shall furnish, in duplicate, a complete Standard Form 119, Contractor's Statement of Contingent or Other Fees. If offeror/quoter has previously furnished a completed Standard Form 119 to the office issuing this solicitation, he may accompany his proposal/quotation with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous solicitation or contract, if any, in connection with which such form was submitted, and (c) representing that the statement in such form is applicable to this proposal/quotation.

(End of clause)

7-2002.2 *Late Bids, Modifications of Bids or Withdrawal of Bids.* The following provision shall be included in all advertised procurements (this replaces paragraphs 7 and 8 of Standard Forms 22 and 33A).

LATE BIDS, MODIFICATIONS OF BIDS OR WITHDRAWAL OF BIDS (1979 MAR)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (*e.g.*, a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or,

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

(b) Any modification or withdrawal of bid is subject to the same conditions as in (a) above except that withdrawal of bids by telegram is authorized. A bid may also be withdrawn in person by a bidder or his authorized representative, *provided* his identity is made known and he signs a receipt for the bid, but only if the withdrawal is made prior to the exact time set for receipt of bids.

(c) The only acceptable evidence to establish:

(i) the date of mailing of a late bid, modification or withdrawal sent either by registered or certified mail is the U. S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U. S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification or withdrawal shall be deemed to have been mailed late. (The term "*postmark*" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)

(ii) the time of receipt at the Government installation is the time/date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding the above, a late modification of an otherwise successful bid which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

NOTE: The term "*telegram*" includes mailgrams.

(End of provision)

7-2002.3 *Late Technical Proposals.* The following provision shall be included in solicitations covering the first step of two step formal advertising (this replaces paragraphs 7 and 8 of Standard Forms 22 and 33A).

LATE TECHNICAL PROPOSALS, MODIFICATIONS OF TECHNICAL PROPOSALS AND WITHDRAWALS OF TECHNICAL PROPOSALS (1979 MAR)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in Step Two is issued, and

(i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (*e.g.*, an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);

(ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(iii) it is the only proposal received.

(b) Any modification of a proposal is subject to the same conditions as in (a)(i) and (ii) above.

(c) The only acceptable evidence to establish:

(i) the date of mailing of a late proposal or modification sent either by registered or certified mail is the U. S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U. S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal or modification of proposal shall be deemed to have been mailed late. (The term "*postmark*" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)

(ii) The time of receipt at the Government installation is the time/date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation

(d) Proposals may be withdrawn by written notice or telegram received at any time prior to the exact time set for receipt of bids under Step 2 Proposals may be withdrawn in person by an offeror or his authorized representative, *provided* his identity is made known and he signs a receipt for the proposal prior to the exact time set for receipt of bids under Step 2.

NOTE: The term "*telegram*" includes mailgrams.

(End of provision)

7-2002.4 *Late Proposals*. The following provision shall be included in all negotiated solicitations other than the first step of two-step formal advertising, in which case the Late Technical Proposals provision in 7-2002.3 shall be used. (The following provision replaces paragraphs 7 and 8 of Standard Forms 22 and 33A.)

LATE PROPOSALS, MODIFICATIONS OF PROPOSALS AND WITHDRAWALS OF PROPOSALS (1979 MAR)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made; and

- (i) it was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for receipt of offers (*e.g.*, an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th or earlier);
- (ii) it was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or
- (iii) it is the only proposal received.

(b) Any modification of a proposal, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in (a)(i) and (ii) above.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish:

- (i) the date of mailing of a late proposal or modification sent either by registered or certified mail is the U. S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the proposal or modification of proposal shall be deemed to have been mailed late. (The term "*postmark*" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed on the date of mailing by employees of the U.S. or Canadian Postal Service. Therefore, offerors should request the postal clerk to place a hand cancellation bull's-eye "postmark" on both the receipt and the envelope or wrapper.)
- (ii) the time of receipt at the Government installation is the time/date stamp of such installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding the above, a late modification of an otherwise successful proposal which makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) Proposals may be withdrawn by written notice or telegram received at any time prior to award. Proposals may be withdrawn in person by an offeror or his authorized representative, *provided* his identity is made known and he signs a receipt for the proposal prior to award.

NOTE: The term "*telegram*" includes mailgrams.

(End of provision)

7-2003 Clauses to be Used When Applicable.

7-2003.1 *Certification of Independent Price Determination.* Insert the following in solicitations in accordance with 1-115(a).

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (1975 OCT)

(a) By submission of this bid or proposal, each bidder or offeror certifies, and in the case of a joint bid or proposal, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or offeror or with any competitor;

(2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder or offeror and will not knowingly be disclosed by the bidder or offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and

(3) no attempt has been made or will be made by the bidder or offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) he is the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (a) he is not the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (b) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid or proposal will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and unless it is determined that such disclosure was not made for the purpose of restricting competition.

(End of clause)

7-2003.2 *Notice of Total Small Business Set-Aside.* In accordance with 1-706.5(c) insert the following clause.

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (1972 JUL)

(a) *Restriction.* Offers under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(b) *Definition.* A "*small business concern*" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (Code of Federal Regulations, Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(End of clause)

7-2003.3 *Notice of Partial Small Business Set-Aside.* In accordance with 1-706.6(c)(1) or (2), insert the clause in (a) or (b) below.

(a)

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (1973 JUN)

(a) *General.* Part of this procurement identified in the Schedule as the "set-aside portion," has been set aside for award only to small business concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) Determining Eligibility.

(A) To be eligible to participate in the set-aside portion of this procurement, a small business concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over the other offerors.

(2) Determining Priority for Award. Small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also labor surplus area concerns.

Group 2. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, offers on the set-aside portion will be requested from concerns in the order of their offers on the non-set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total set-aside portion.

(3) Determining the Set-Aside Award Price.

(A) General Rule.

Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) Award Price Involving Foreign End Products (See ASPR Section VI).

(i) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) Obtaining Offers and Processing Set-Aside Awards.

(i) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(ii) When an unaccepted low offer is involved; if (I) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the set-aside portion, the offer could be accepted (*e.g.*, because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer, in turn, from lowest to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(c) *Definitions*.

(1) A "*small business concern*" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(3) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance*. Each offeror desiring to be considered for award as a LSA concern on the set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

> CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract*. Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Partial Small Business Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

(b)

7-2003.3(b)

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE — ALTERNATE (1978 JUN)

(a) *General.* Part of this procurement identified in the Schedule as the "set-aside portion," has been set aside for award only to small business concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures.*

(1) Determining Eligibility.

(A) To be eligible to participate in the set-aside portion of this procurement, a small business concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over the other offerors.

(2) Determining Priority for Award. Small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also LSA. A concern in this group which has received an award on the non-set-aside portion of an item shall first be requested to offer the same percentage of the set-aside portion. If a percentage of the set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Small business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 1, the same procedure shall be followed for Group 2.

(3) Determining the Set-Aside Award Price.

(A) General Rule.

Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non- set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-set-aside portion of an item was made on such a conditioned offer. When offers on the non-set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) Award Price Involving Foreign End Products (See ASPR Section VI).

(i) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns submitting foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product, when the highest award price on the non-set-aside portion is established by a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) Obtaining Offers and Processing Set-Aside Awards.

(i) When an unaccepted low offer is not involved; if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non- set-aside portion. Concerns may offer less than the total set-aside portion. If any part of the set-aside portion is not taken by eligible small business concerns, the partial set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(ii) When an unaccepted low offer is involved; if (I) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the set-aside portion, the offer could be accepted (*e.g.*, because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the set-aside, Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer, in turn, from lowest to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion of any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire set-aside portion is not taken by eligible small business concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) Determining the Set-Aside Quantity.

(A) The maximum quantity of an item which may be awarded to any eligible small business concern shall be determined by applying the percentage of the total non-set-aside portion of an item on which an offer was made to the total quantity of the set-aside portion of that item.

(B) If a concern offers on two or more items on the non-set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the set-aside portion of the items affected will be determined by applying the percentage of the total quantities of these items on the non-set-aside portion that could have been awarded to the total of these items on the set-aside portion.

(C) Notwithstanding the foregoing, if the entire set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original groups in turn, to dispose of any balance of the item still remaining.

(c) *Definitions.*

(1) A "*small business concern*" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area*. The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(3) *Labor Surplus Area Concerns*. The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(d) *Agreement*. The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance*. Each offeror desiring to be concidered for award as a LSA concern on the set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided* that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price,

> **CAUTION:** Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract*. Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Partial Small Business Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

7-2003.4 *Notice of Combined Small Business-LSA Set-Asides*. In accordance with 1-706.7(d)(1) or (2), insert the clause in (a) or (b) below.

(a)

NOTICE OF COMBINED SMALL BUSINESS—LABOR SURPLUS AREA SET-ASIDE (1978 JUN)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

(2) Part of this procurement, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA set- aside portion will be made after awards have been made on the non LSA set-aside portion.

(b) *Definitions.*

(1) A "*small business concern*" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area*. The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(3) *Labor Surplus Area Concerns*. The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) Determining Eligibility:

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) Determining Priority for Award: Labor surplus concerns which are also small business concerns and other small business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. Small business concerns which are also labor surplus area (LSA) concerns.

Group 2. Small business concerns which are not labor surplus area (LSA) concerns.

Within each of the above groups, offers on the LSA set-aside portion will be requested from concerns in the order of their offers on the non LSA set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total LSA set-aside portion.

(3) Determining the LSA set-aside award price:

(i) *General Rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the LSA set-aside shall be made at the highest unit price for each item awarded on the non LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non LSA set-aside portion. The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non LSA set-aside award price.

(ii) *Award Price Involving Foreign End Products* (see ASPR Section VI).

(A) When the highest award price on the non LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non LSA set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing LSA Set-aside Awards.*

(A) When an unaccepted low offer is not involved:

if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded on the non LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(B) When an unaccepted low offer is involved:

if(I) a responsive offer is submitted on the non LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non LSA set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the LSA set-aside portion, the offer could be accepted (*e.g.*, because the LSA set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed.

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case 1. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance.* Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract.* Only one award will be made for each item or sub-item of the non LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business - Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

7–2003.4(b)

(b)

NOTICE OF COMBINED SMALL BUSINESS—LABOR SURPLUS AREA SET-ASIDE - ALTERNATE (1978 JUN)

(a) *General.*

(1) Offers under this procurement are solicited from small business concerns only and the procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of

the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of the Government procurement is placed with small business concerns. Offers received from firms which are not small business concerns shall be considered nonresponsive and shall be rejected.

(2) Part of this procurement, identified in the solicitation as the "labor surplus area (LSA) set-aside portion," has been further set aside for award only to one or more LSA concerns, which are also small business concerns, and, to a limited extent, to small business concerns which do not qualify as LSA concerns. Award of the LSA set- aside portion will be made after awards have been made on the non LSA set-aside portion.

(b) *Definitions.*

(1) A "*small business concern*" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is making an offer on Government contracts, and can further qualify under the criteria set forth in the regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract, end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(2) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(3) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(c) *Procedures.*

(1) Determining Eligibility:

(i) To be eligible to participate in the LSA set-aside portion of this procurement, a labor surplus area concern which is also a small business concern (or a small business concern to the extent indicated below) must submit a responsive offer on the non LSA set-aside portion.

(ii) The Government reserves the right not to award to any concern submitting a token offer on the non LSA set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) Determining Priority for Award: Labor surplus concerns eligible under (1) above will participate in the LSA set-aside in the following order of priority:

Group 1. Small business concerns which are also LSA concerns. A concern in this group which has received an award on the non LSA set-aside portion of an item shall first be requested to offer the same percentage of the LSA set-aside portion. If a percentage of the LSA set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations of the balance of the item.

Group 2. Small business concerns which are not LSA concerns. If a quantity of the item remains unawarded after negotiations with concerns in Group 1, the same procedure shall be followed for Group 2.

(3) Determining the LSA set-aside award price:

(i) *General Rule.* Subject to the exceptions listed in (ii) and (iii) below, awards under the LSA set-aside shall be made at the highest unit price for each item awarded on the non LSA set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating offers on the non LSA set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non LSA set-aside portion of an item was made on such a conditioned offer. When offers on the non LSA set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The LSA set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non LSA set-aside award price.

(ii) *Award Price Involving Foreign End Products* (see ASPR Section VI).

(A) When the highest award price on the non LSA set-aside is established by an award for a foreign end product, the award price for the LSA set-aside portion shall be the award price on the non LSA set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the LSA set-aside to concerns offering foreign end products, in which case the general rule applies.

(B) Award under the LSA set-aside to a concern offering a foreign end product, when the highest award price on the non LSA set-aside portion is established by an award to a firm offering a domestic source end product, shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non LSA set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) *Obtaining Offers and Processing LSA Set-aside Awards.*

(A) When an unaccepted low offer is not involved:

if there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the LSA set-aside quantity at the highest unit price awarded on the non LSA set-aside portion. Concerns may offer less than the total LSA set-aside portion. If any part of the LSA set-aside portion is not taken by eligible concerns, the partial LSA set-aside is automatically dissolved as to the unawarded portion. Such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(B) When an unaccepted low offer is involved:

if(I) a responsive offer is submitted on the non LSA set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non LSA set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none" or other quantity limitations, or because the offeror is nonresponsible), and (II) at the time of negotiation for the LSA set-aside portion, the offer could be accepted (*e.g.*, because the LSA set-aside quantity is large enough that the quantity limitations could be complied with, or because the offeror has now become responsible), then the following procedures shall be followed.

Step One. Eligible concerns (in the order of priority in (2) above) will be requested to offer at the adjusted unit price of the unaccepted offer, a quantity of the LSA set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern is willing to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above) shall be requested to make offers on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three.

Case I. If the unaccepted offer was submitted by a concern not eligible to participate in the LSA set-aside, and if any of the quantity under Step Two is not awarded, then it and all other remaining quantities of the LSA set-aside portion must be withdrawn and resolicited. If the entire quantity under Step Two is awarded among eligible concerns, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion.

Case 2. If the unaccepted offer was submitted by a concern eligible to participate in the LSA set-aside, Steps Four, Five and Six are applicable to the remaining LSA set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the LSA set-aside portion equal to the entire quantity of its unaccepted offer at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer, at the highest unit price awarded on the non LSA set-aside portion on any quantity of the LSA set-aside portion, remaining after Steps One, Two, Three and Four have been completed.

Step Six. If the entire LSA set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial LSA set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) Determining the LSA Set-Aside Quantity:

(i) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non LSA set-aside portion of an item on which an offer was made to the total quantity of the LSA set-aside portion of that item.

(ii) If a concern offers on two or more items on the non LSA set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the LSA set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non LSA set-aside portion that could have been awarded to the total of these items on the LSA set-aside portion.

(iii) Notwithstanding the foregoing, if the entire LSA set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the LSA set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(d) *Agreement.* The offeror agrees that if awarded a contract as a small business LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance*. Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "*Eligibility for Preference as a Labor Surplus Area Concern*" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "*Eligibility for Preference as a Labor Surplus Area Concern*" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract*. Only one award will be made for each item or sub-item of the non LSA set-aside portion and only one award will be made for each item or sub-item of the LSA set-aside portion. For the purpose of equitably distributing orders in accordance with this "Notice of Combined Small Business - Labor Surplus Area Set-Aside," the Government will apportion the quantities to be ordered as equally as possible between the non LSA set-aside Contractor and the LSA set-aside Contractor to whom the awards are made.

(End of clause)

7-2003.5 *Notice of LSA Set-Asides*. In accordance with 1-804.2(b)(1) or (2), insert the clause in (a) or (b) below.

(a)

NOTICE OF LABOR SURPLUS AREA SET-ASIDE (1978 JUN)

(a) *General*. Part of this procurement, identified in the Schedule as the "set-aside portion," has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures*.

(1) Determining Eligibility.

(A) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) Determining Priority for Award. Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns.

Group 2. Other LSA concerns.

Group 3. Small business concerns which are not LSA concerns.

Group 4. Other business concerns which are not LSA concerns.

Within each of the above groups, offers on the set-aside portion will be requested from concerns in the order of their offers on the non-set-aside portion, beginning with the lowest responsive offer. Concerns may offer less than the total set-aside portion.

(3) Determining the Set-Aside Award Price.

(A) General Rule.

Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) Award Price Involving Foreign End Products, (see ASPR Section VI).

(i) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) Obtaining Offers and Processing Set-Aside Awards.

(i) When an unaccepted low offer is not involved:

if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

(ii) When an unaccepted low offer is involved:

if (I) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none," or other quantity limitations, or because the bidder is nonresponsible), and (II) at the time of negotiation for the set-aside portion, the offer could be accepted (*e.g.*, because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three. Steps Four, Five and Six are appliceble to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However*, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion on any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided*, that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 beginning with the lowest offeror on the non-set-aside portion at prices no higher than the lowest price awarded on the non-set-aside portion.

Step Six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(c) *Definitions*.

(1) *Labor Surplus Area*. The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(2) *Labor Surplus Area Concerns*. The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(3) A "*small business concern*" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement*. The offeror agrees that if awarded a contract as a LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance*. Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "*Eligibility for Preference as a Labor Surplus Area Concern*" in Section B of the solicitation, the address(es) when costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "Eligibility for Preference as a Labor Surplus Area Concern" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract*. Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this 'Notice of Labor Surplus Area Set-Aside,' the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

7-2003.5(b)

(b)

NOTICE OF LABOR SURPLUS AREA SET-ASIDE — ALTERNATE (1978 JUN)

(a) *General*. Part of this procurement, identified in the Schedule as the "set-aside portion", has been set aside for preferential award to one or more labor surplus area (LSA) concerns, and, to a limited extent, to other business concerns which do not qualify as LSA concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

(b) *Procedures*.

(1) Determining Eligibility.

(A) To be eligible to participate in the set-aside portion of this procurement, a concern must submit a responsive offer on the non-set-aside portion.

(B) The Government reserves the right not to award to any concern submitting a token offer on the non-set-aside portion or attempting by any other device to secure an unfair advantage over other offerors.

(2) Determining Priority for Award. Labor surplus concerns and other business concerns eligible under (1) above will participate in the set-aside in the following order of priority:

Group 1. LSA concerns which are also small business concerns.

A concern in this group which has received an award on the non-set-aside portion of an item shall first be requested to offer the same percentage of the set-aside portion. If a percentage of the set-aside portion of the item remains to be awarded, a drawing by lot shall determine the order of priority within this group for negotiations for the balance of the item.

Group 2. Other LSA concerns.

If a quantity of an item remains unawarded after negotiations have been completed with concerns in Group 1, the same procedure shall be followed for Group 2.

Group 3. Small business concerns which are not LSA concerns.

If a quantity of an item remains unawarded after negotiations with concerns in Group 2, the same procedure shall be followed for Group 3.

Group 4. Other business concerns which are not LSA concerns.

If a quantity of the item remains unawarded after negotiations with concerns in Group 3, the same procedure shall be followed for Group 4.

(3) Determining the Set-Aside Award Price.

(A) General Rule.

Subject to the exceptions listed in (B) and (C) below, awards under the set-aside shall be made at the highest unit price for each item awarded on the non-set-aside, adjusted to reflect transportation, rent free use of Government property and other cost factors considered in evaluating bids on the non-set-aside portion. When any one of separate quantities offered on an item cannot be accepted without awarding other quantities of that item at higher prices, the weighted average price shall be used to determine the highest unit price for award if the highest award of the non-set-aside portion of an item was made on such a conditioned offer. When offers on the non-set-aside portion tie-in two or more items so that an award cannot be made for a quantity on one item without a concurrent award of a quantity on another item, such tie-in conditions will be disregarded and the price offered for each quantity under each item shall be considered separately. The set-aside award price shall be subject to the same discount terms used in the evaluation of the highest non-set-aside award price.

(B) Award Price Involving Foreign End Products, (see ASPR Section VI).

(i) When the highest award price on the non-set-aside is established by an award for a foreign end product, the award price for the set-aside portion shall be the award price on the non-set-aside as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the set-aside to concerns offering foreign end products in which case the general rule applies.

(ii) Award under the set-aside to a concern offering a foreign end product when the highest award price on the non-set-aside portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the non-set-aside portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(C) Obtaining Offers and Processing Set-Aside Awards.

(i) When an unaccepted low offer is not involved:
if there is no unaccepted low offer meeting the criteria in (ii) below, eligible concerns in the order of priority in (2) above will be requested to offer on the set-aside quantity at the highest unit price awarded on the non-set-aside portion. Concerns may offer less than the total set-aside portion, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first *3* groups, awards will be made in Group *4* at prices no higher than the lowest price awarded on the non-set-aside portion.

(ii) When an unaccepted low offer is involved:
if (I) a responsive offer is submitted on the non-set-aside portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the non-set-aside portion, but cannot be accepted (*e.g.*, because of "all-or-none", or other quantity limitations, or because the bidder is nonresponsible), and (II) at the time of negotiation for the set-aside portion, the offer could be accepted (*e.g.*, because the set-aside quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, will be requested to offer at the adjusted unit price of the unaccepted bid, a quantity of the set-aside portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above), excluding Group 4 firms, shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three. Steps Four, Five and Six are applicable to the remaining set-aside portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. *However*, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the set-aside portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (I) and (II) above, Steps One, Two and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the non-set-aside portion on any quantity of the set-aside portion remaining after Steps One, Two, Three and Four have been completed, *provided* that if any part of the set-aside portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 at prices no higher than the lowest price awarded on the non-set-aside portion.

Step Six. If the entire set-aside portion is not taken by eligible concerns pursuant to Steps One through Five above, the partial set-aside is automatically dissolved as to the unawarded portion and such unawarded portion may be procured by advertising or negotiation as appropriate, in accordance with existing regulations.

(4) Determining the Set-Aside Quantity.

(A) The maximum quantity of an item which may be awarded to any eligible concern shall be determined by applying the percentage of the total non-set-aside portion of an item on which an offer was made to the total quantity of the set-aside portion of that item.

(B) If a concern offers on two or more items on the non-set-aside portion, but conditions its offer in such a manner that the total of all these quantities may not be awarded, or offers a quantity which, at the option of the Government, may be applied to one or more items, the overall maximum which can be offered on the set-aside portion of the items affected will be determined by applying the percent of the total quantities of these items on the non-set- aside portion that could have been awarded to the total of these items on the set-aside portion.

(C) Notwithstanding the foregoing, if the entire set-aside portion of an item is not awarded after completion of the above steps, then the unawarded balance shall be offered to those concerns who were previously awarded quantities on the set-aside portion but who were prevented from accepting additional quantities because of the quantity limitations stated above. The unawarded quantity will first be offered to that concern in the first priority which has received the largest quantity of the item. If two or more offerors in the first priority received an identical quantity, a drawing by lot shall determine their priority. If a balance still remains, this procedure shall be repeated with the offerors in each of the original priority groups in turn, to dispose of any balance of the item still remaining.

(c) *Definitions.*

(1) *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582".

(2) *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

(3) A "*small business concern*" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is offering on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in his own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns: *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(d) *Agreement*. The offeror agrees that if awarded a contract as a LSA concern under the set-aside portion of this procurement, he will perform or cause to be performed by a first tier subcontractor a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as LSA.

(e) *Identification of Areas of Performance*. Each offeror desiring to be considered for award as a LSA concern on the LSA set-aside portion of this procurement shall identify in Section B of his offer the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the contract. If the Department of Labor classification of any such area changes after the offeror has submitted his offer, the offeror may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the LSA set-aside portion. Such offerors are instructed to insert in the clause entitled "*Eligibility for Preference as a Labor Surplus Area Concern*" in Section B of the solicitation, the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price.

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location in the space provided in the clause entitled "*Eligibility for Preference as a Labor Surplus Area Concern*" set forth in Section B of the solicitation will preclude consideration of the offeror as a LSA concern.

(f) *Requirements Contract*. Only one award will be made for each item or sub-item of the non-set-aside portion and only one award will be made for each item or sub-item of the set-aside portion. For the purpose of equitably distributing orders in accordance with this 'Notice of Labor Surplus Area Set-Aside,' the Government will apportion the quantities to be ordered as equally as possible between the non-set-aside Contractor and the set-aside Contractor to whom the awards are made.

(End of clause)

7-2003.6 *Qualified End Products*. When qualified end products are to be procured (see Section I, Part 11), the following clause shall be inserted.

QUALIFIED END PRODUCTS (1974 APR)

Awards for any end items which are required to be qualified products will be made only when such items have been tested and are qualified for inclusion in a Qualified Products List identified below (whether or not actually included in the List) at the time set for opening of bids, or the time of award in the case of negotiated contracts. Offerors should contact the office designated below to arrange to have the products which they intend to offer tested for qualification.

The offeror shall insert the item name and the test number (if known) of each qualified product in the blank spaces below.

Item Name...

Test Number...

Offerors offering products which have been tested and qualified, but which are not yet listed, are requested to submit evidence of such qualification with their bids or proposals, so that they may be given consideration. If this is a formally advertised procurement, any bid which does not identify the qualified product being offered, either above or elsewhere in the bid, will be rejected.

Any change in location or ownership of the plant at which a previously approved product is, or was, manufactured requires re-evaluation of the qualification. Such re-evaluation must be accomplished prior to the bid opening date in the case of advertised procurements and prior to the date of award in the case of negotiated procurements. Failure of offerors to arrange for such re-evaluation shall preclude consideration of their offers.

(End of clause)

Contracting officers shall identify, following the above clause, each Qualified Products List involved and give the name and address of the office identified in the specification with which manufacturers should communicate.

7-2003.7 *Qualified Products - Components.* When qualified products (see Section I, Part 11) are to be procured as components of end items, the following clause shall be inserted.

QUALIFIED PRODUCTS—COMPONENTS (1969 DEC)

When any of the end items which are to be supplied to the Government by the Contractor will contain one or more components which are required by the applicable specification to be qualified products, such components shall have been tested and shall be qualified for inclusion in the Qualified Products List (whether or not actually included in the List) at the time of award of any subcontract by the Contractor for such components, or, in the event the Contractor plans to manufacture such components himself, shall have been so tested and have so qualified before the Contractor begins to manufacture such components for performance of this contract (not before manufacture of the prototype, preproduction model, or first article, for qualification testing). Unless required for interchangeability or compatibility, the Contractor shall not cite brand names from any Qualified Products List in any subcontract solicitation, but shall refer to the pertinent military specification so that optimum competition may be obtained. Delay resulting from the Contractor awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule.

Any change in location or ownership of the plant at which a previously approved product is, or was, manufactured requires re-evaluation of the qualification. Such re-evaluation must be accomplished prior to the award of any subcontract by the Contractor for such components or prior to the beginning of manufacture if the Contractor manufactures such components himself.

(End of clause)

7-2003.8 *Availability of Specifications, Standards, and Descriptions Listed in DODISS or DoD Directive 5000.19-L, Volume II.* Insert the following clause in accordance with 1-1203.2(a).

AVAILABILITY OF SPECIFICATIONS, STANDARDS AND DESCRIPTIONS (1977 JUN)

Specifications, standards and descriptions cited in this solicitation are available as indicated below:

(a) *Unclassified Federal, Military and Other Specifications and Standards (Excluding Commercial), and Data Item Descriptions.* Submit request on DD Form 1425 (Specifications and Standards Requisition) to:

Commanding Officer
U.S. Naval Publications and Forms Center
5801 Tabor Avenue — Philadelphia, Pa. 19120

The Acquisition Management Systems and Data Requirements Control List, DoD Directive 5000.19-L, Volume II, may be ordered on the DD Form 1425. The Department of Defense Index of Specifications and Standards (DODISS) may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D. C., 20402. When requesting a specification or standard, the request shall indicate the title, number, date and any applicable amendment thereto by number and date. When requesting a data item description, the request shall cite the applicable data item number set forth in the solicitation. When DD Form 1425 is not available, the request may be submitted in letter form, giving the same information as listed above, and the solicitation or contract number involved. Such requests may also be made to the activity by Telex No. 834295, Western Union No. 710-670-1685, or telephone (area code 215-697-3321) in case of urgency.

(b) *Commercial Specifications, Standards and Descriptions.* These specifications, standards and descriptions are not available from Government sources. They may be obtained from the publishers.

(End of clause)

7-2003.9 *Availability of Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in Department of Defense Directive 5000.19-L, Volume II, and Plans, Drawings, and Other Pertinent Documents.* In accordance with 1-1203.3, insert a provision substantially similar to (a) or (b) below, as appropriate.

(a) *Obtaining Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.*

AVAILABILITY OF SPECIFICATIONS AND STANDARDS NOT LISTED IN DODISS, DATA ITEM DESCRIPTIONS NOT LISTED IN DOD DIRECTIVE 5000.19-L, VOLUME II, AND PLANS, DRAWINGS, AND OTHER PERTINENT DOCUMENTS

The specifications, standards, plans, drawings, descriptions and other pertinent documents cited in this solicitation may be obtained by submitting request to:

(*Activity*) ....

(*Complete Address*) ....

Requests should give the number of the solicitation and the title and number of the specification, standard, plan, drawing or other pertinent document requested, exactly as cited in this solicitation.

(End of provision)

(b) *Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.*

AVAILABILITY FOR EXAMINATION OF SPECIFICATIONS, STANDARDS, PLANS, DRAWINGS, DATA ITEM DESCRIPTIONS, AND OTHER PERTINENT DOCUMENTS

The specifications, standards, plans, drawings, descriptions, and other pertinent documents cited in this solicitation may be examined at the following locations:

....

(*Insert Complete Address*)

(End of provision)

7-2003.10 "*Brand Name or Equal*" *Purchase Descriptions.* In accordance with 1-1206.3(b), insert the following clause.

BRAND NAME OR EQUAL (1973 APR)

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this Invitation for Bids have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the Invitation for Bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid, as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of clause)

7-2003.11 *Evaluation of Options.*

(a) In accordance with 1-1504(b), insert a provision substantially similar to:

EVALUATION OF OPTIONS

If the Government elects to exercise an option simultaneously with award, bids or proposals will be evaluated for purposes of award on the basis of the total price for the basic quantity and the option quantity exercised with award.

(End of provision)

(b) In accordance with 1-1504(c), insert a provision substantially similar to:

EVALUATION OF OPTIONS

A. Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. Evaluation of options will not obligate the Government to exercise the option or options.

B. Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as non-responsive. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

(c) In accordance with 1-1504(d), insert the following provision.

EVALUATION OF OPTIONS (1974 APR)

A. Bids and proposals will be evaluated for purposes of award by adding the total price for all option quantities to the total price for the basic quantity. The offeror's target cost for the basic and option quantities will be deemed to be the price of the basic and option quantities for purposes of evaluation. Evaluation of options will not obligate the Government to exercise the option or options.

B. Any bid or proposal which is materially unbalanced as to prices for basic and option quantities may be rejected as non-responsive. An unbalanced bid or proposal is one which is based on prices significantly less than cost for some work and prices which are significantly overstated for other work.

(End of provision)

7-2003.12 *Affiliated Bidders.* In accordance with 2-201(a)Sec.K(ii) or 2-201(b)(xvii), insert the following clause.

AFFILIATED BIDDERS (1974 APR)

(a) Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both.

(b) Each bidder shall submit with his bid an affidavit containing information as follows:

(i) whether the bidder has any affiliates;

(ii) the names and addresses of all affiliates of the bidder; and

(iii) the names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of his affiliates, and whether as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of clause)

7-2003.13 *Preference for Labor Surplus Area Concerns.* In accordance with 2-201(a)Sec.K(iii) or 3-501(b)(3)Sec.K(vii), insert the following clause.

PREFERENCE FOR LABOR SURPLUS AREA CONCERNS (1978 JUN)

This procurement is not set aside for labor surplus area concerns. However, the offeror's status as such a concern may affect entitlement to award in case of tie offers or offer evaluation in accordance with the Buy American clause of this solicitation. In order to have his entitlement to a preference determined if those circumstances should apply, the offeror must identify below the labor surplus area in which the costs he will incur on account of manufacturing or production (by himself or his first-tier subcontractors) amount to more than fifty percent (50%) of the contract price.

....

....

Failure to identify the locations as specified above will preclude consideration of the offeror as a labor surplus area concern. Offeror agrees that if, as a labor surplus area concern, he is awarded a contract for which he would not have qualified in the absence of such status, he will perform the contract or cause it to be performed, in accordance with the obligations which such status entails.

(End of clause)

7-2003.14 *Equal Opportunity.*

(a) *Pre-Award Compliance Review.* Each solicitation, (excluding construction) written or oral, for non-exempt contracts estimated to be for $1,000,000 or more shall advise bidders or offerors that prior to the award of a contract the proposed contractor and his known first-tier subcontractors with proposed subcontracts of $1,000,000 or more shall be subject to an EEO compliance review as follows:

PRE-AWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (1970 AUG)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective 1 July 1968, an award in the amount of $1,000,000 or more will not be made under this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of $1,000,000 or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(b) *Representations*. Insert the following provisions as applicable.

(1) When not contained on the solicitation form, the following:

7-2003.14(b)(1)(A)

(A) Certification of Nonsegregated Facilities

CERTIFICATION OF NONSEGREGATED FACILITIES (1970 AUG)

(Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing Federally assisted construction contracts, exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause). By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin, because of habit, local custom or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of Equal Opportunity clause; that he will retain such certifications in his files; and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding $10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)

7-2003.14(b)(1)(B)

(B) Previous Contracts and Compliance Reports.

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (1973 APR)

The offeror represents that he [ ] has, [ ] has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that he [ ] has, [ ] has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (*The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.*)

7-2003.14(b)(2)

(2) Except for construction contracts, include the following provision when the contract includes the Equal Opportunity clause, if the provision is not already included on the solicitation form:

AFFIRMATIVE ACTION COMPLIANCE (1979 SEP)

The bidder (or offeror) represents that (1) he ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) he ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)

(c) *Foreign Employment*. Insert the following clause in all nonexempt (see 12-808) solicitations when a contractor is required to perform in or on behalf of a foreign country.

CONTRACT CLAUSES AND SOLICITATION PROVISIONS

NOTIFICATION OF VISA DENIAL (1978 SEP)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States on the basis that such individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). Therefore, the Contractor agrees to notify the Department of State, Washington, D. C., Attention: Director, Bureau of Politico-Military Affairs, and the Director, OFCCP, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract and it believes such denial is attributable to race, religion, sex, or national origin of the employee or potential employee.

(End of provision)

(d) *Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity*. In accordance with 12-807.1 regarding affirmative action compliance requirements, insert the following provisions in all applicable solicitations involving construction in excess of $10,000. Follow this provision's parenthetical instructions by inserting the applicable construction trade(s), percentage goals and geographical description of the covered area as provided in Departmental instructions.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (1978 SEP)

(a) The Offeror's or Bidder's attention is called to the "Equal Opportunity" and the "Affirmative Action Compliance Requirements for Construction" clauses set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables — —	Goals for minority participation for each trade	Goals for female participation in each trade
	(insert goals for each year)	(Insert goals for each year)

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity clause, specific affirmative action obligations required by the clause entitled "Affirmative Action Compliance Requirements for Construction" and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director, OFCCP within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(d) As used in this Notice, and in the contract resulting from this Solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).

(End of Provision)

7-2003.15 *Patents - Government Licenses*. In accordance with 2-201(a)Sec.K(ix), 2-201(b)(xxviii), 3-501(b)(3)Sec.K(xvii), or 3-501(c)(xliv) as appropriate, insert the following provision.

PATENTS - GOVERNMENT LICENSEE (1974 APR)

The Government is obligated to pay a royalty applicable to the proposed procurement because of a license agreement between the Government and the patent owner. The patent number is .... and the royalty rate is .... If the offeror is the owner of, or a licensee under, the patent, he shall indicate below:

( ) Owner
( ) Licensee

If an offeror does not indicate that he is the owner or a licensee of the patent, his offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

7-2003.16 *Guaranteed Maximum Shipping Weights and Dimensions.* In accordance with 2-201(a)Sec.K(x), insert the following provision.

GUARANTEED MAXIMUM SHIPPING WEIGHTS AND DIMENSIONS.

Each bid (or proposal) will be evaluated to the destination specified by adding to the f.o.b. origin price all transportation costs to said destination. The guaranteed maximum shipping weights and dimensions of the supplies are required for determination of transportation costs. The bidder (or offeror) is requested to state as part of his offer the weights and dimensions. If separate containers are to be banded and/or skidded into a single shipping unit, details must be described. If delivered supplies exceed the guaranteed maximum shipping weights or dimensions, the contract price shall be reduced by an amount equal to the difference between the transportation costs computed for evaluation purposes based on bidder's (or offeror's) guaranteed maximum shipping weights or dimensions and the transportation costs that should have been used for bid (or proposal) evaluation purposes based on correct shipping data.

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If the bidder (or offeror) fails to state his guaranteed maximum shipping weight and dimensions for the supplies as requested, the Government will use the estimated weights and dimensions below for evaluation; and the Contractor agrees this will be the basis for any reduction in contract prices as provided in this clause. The Government's estimated weights (and dimensions, if applicable) are as follows: ....

(End of provision)

7-2003.17 *Freight Classification Description.* In accordance with 2-201(a)Sec.K(xi), insert the following provision.

FREIGHT CLASSIFICATION DESCRIPTION (1968 JUN)

Bidders (or offerors) are requested to indicate, below, the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies, the same as bidder (offeror) uses for commercial shipment. This description should include the packing of the commodity (box, crate, bundle, loose, setup, knocked down, compressed, unwrapped, etc.) the container material (fiberboard, wooden, etc.), unusual shipping dimensions, and other conditions affecting traffic descriptions. The Government will use these descriptions as well as other information available to it to determine the classification description most appropriate and advantageous to the Government. Bidder (offeror) understands that shipments on any f.o.b. origin contract awarded, as a result of this solicitation, will be made in conformity with the shipping classification description specified by the Government, which may be different from the classification description furnished below.

FOR FREIGHT CLASSIFICATION PURPOSES, BIDDER (OR OFFEROR) DESCRIBES THIS COMMODITY AS ....

(End of provision)

7-2003.18 *Transportation Transit Privilege Credits.* In accordance with 2-201(a)Sec.K(xii), insert the following provision.

TRANSPORTATION TRANSIT PRIVILEGE CREDITS (1968 JUN)

If the bidder (offeror) has established with regulated common carriers transit privileges which can be applied to the supplies when shipped from the original source, bidder (offeror) is invited to offer to utilize such credits to ship the supplies to the designated Government destinations under commercial bills of lading, paying all remaining transportation charges connected therewith, subject to reimbursement by the Government in an amount equal to the remaining charges but not exceeding the amount quoted by the bidder (offeror) below. Such shipments under paid commercial bills of lading will move for the account of and at the risk of the Government, after loading on carrier's equipment and acceptance by the carrier (unless, pursuant to the "Changes" clause, the office administering the contract directs use of Government bills of lading). The amount quoted below by the bidder (offeror) represents the transportation costs, in cents per 100 lb. (freight rate) for full carload/truckload shipments of the supplies from bidder's (offeror's) original source via his transit plant or point to the Government destination(s) listed below by the bidder (offeror), including the carrier's transit privilege, charge, less the applicable transit credit (*i.e.*, the amount (rate) initially paid to the carrier for shipment from original source to bidder's transit plant or point). The rate per CWT quoted will be used by the Government to evaluate the offered f.o.b. origin price unless a lower rate is applicable on the date of bid opening (or closing date specified for receipt of proposals). To have his bid (offer) evaluated on this basis, bidder (offeror) must insert below the remaining transportation charges which he agrees to pay, including any transit charges, and which are subject to reimbursement by the Government, as explained in this provision, to destinations listed in the Schedule as follows:

RATE PER CWT IN CENTS ....
TO DESTINATION ....

(End of provision)

7–2003.19 *FOB Origin* (*With Differentials*). In accordance with 2–201(a)Sec. K(xiii), insert the following provision.

F.O.B. ORIGIN (WITH DIFFERENTIALS)

Notwithstanding the f.o.b. origin delivery terms set forth in the "F.O.B. Origin" clause of the contract, it may be advantageous to the bidder (or offeror) to submit f.o.b. origin prices in the Schedule which include only the lowest cost to the Contractor of loading for shipment at his plant or most favorable shipping point. The cost beyond such plant or point of bringing to the place of delivery and loading, blocking, and bracing on the type vehicle specified by the Government at the time of shipment may exceed the bidder's (offeror's) lowest cost when he ships for his own account. Accordingly, bidders (or offerors) may indicate below a differential which, as explained below, may be added to the offered price, such differential to be expressed as a rate in cents for each 100 pounds (CWT) of the supplies for one or more of the options, under the clause entitled "F.O.B. Origin," which the Government may specify at the time of shipment. Such differential(s), if specified below, will be considered in the evaluation of bids (or proposals) to determine the lowest overall cost to the Government. If, at the time of shipment, the Government specifies (normally on a Government bill of lading) a mode of transportation, type of vehicle, or place of delivery for which the bidder (or offeror) has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight on the Government bill of lading), as a separate reimbursable item on his invoice for the supplies. Under this clause (F.O.B. Origin (With Differentials)), the Government shall have the option of performing or arranging at its own expense any transportation from Contractor's shipping plant or point to carrier's facility at the time of shipment and, whenever this option is exercised, no reimbursement shall be made by the Government based on a quoted differential. Bidder's (or offeror's) differential(s), if any, in cents for each 100 pounds for optional mode of transportation, types of vehicle, transportation within a mode, or place of delivery, specified by the Government at the time of shipment, and not included in the f.o.b. origin price indicated in the Schedule by the bidder (or offeror), is (are) as follows:

.... (*carload, truckload, less-load.*
wharf, flatcar, driveway, etc.)

(End of provision)

7-2003.20 *Evaluation of Export Bids (Or Proposals).* In accordance with 2-201(a)Sec. K(xiv), insert the following provision.

EVALUATION OF EXPORT BIDS (OR PROPOSALS) (1968 JUN)

A. *Port Handling and Ocean Charges.* In evaluating bids (or proposals), port handling and ocean charges on file and published by the Military Traffic Management and Terminal Service as of the date of bid opening (or the closing date specified for receipt of proposals) and effective for the date of the expected initial shipment will be used.

B. *F.O.B. Origin, Transportation Under Government Bill of Lading.*

(1) Bids (or proposals) will be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, will be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the port of loading, and the ocean shipping costs from the United States port of loading to the overseas port of discharge (see D below). The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Bids (or proposals) will be evaluated on the basis of shipment through one of the ports set forth in paragraph D below, to the overseas port of discharge. Evaluation will be made on the basis of shipment through the port that will result in the lowest cost to the Government.

Ports of loading will be considered as destinations within the meaning of the term "f.o.b. destination" as that term is used in the "F.O.B. Origin" clause of this contract.

C. *F.O.B. Port of Loading With Inspection and Acceptance at Origin.*

(1) Bids (or proposals) will be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see (2) below), will be the port handling charges at the port of loading and the ocean shipping cost from the port of loading to the overseas port of discharge (see D below).

(2) Unless bids (or offers) are applicable only to f.o.b. origin delivery under Government bills of lading (see B above), bidders (or offerors) must designate, below, at least one of the ports of loading listed in paragraph D below, as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the bid (or offer) nonresponsive.

PLACE OF DELIVERY: ....

(Insert at least one of the ports listed in paragraph D below.)

D. *Ports of Loading for Bid (or Proposal) Evaluation.* Ports to be used by the Government in evaluating bids (or proposals) are as follows:

.... *(Ports)*

E. *Ports of Loading Nominated by Bidder (Offeror).* The above named ports of loading listed in D above are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, bidders (or offerors) may nominate additional ports of loading which the bidder (offeror) considers to be more favorable to the Government. The Government may disregard such nominated port(s) if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S. Flag vessels, and other pertinent transportation factors, it determines that use of the nominated port(s) is not compatible with the required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of bids (or offers) only for those items scheduled herein for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between 15 April and 30 November annually). All ports named, including those nominated by bidders (or offerors), and determined to be eligible as provided herein, will be considered in evaluating all bids (or proposals) received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations will be based on availability of ocean services by United States Flag vessels only. Additional U.S. port(s) of loading nominated by bidder (or offeror), if any: ....

Bidder (or offeror) will indicate whether price(s) is (are) based on:

( ) Paragraph B, f.o.b. origin, transportation by GBL to port listed in D;
( ) Paragraph C, f.o.b. destination (*i.e.*, a port listed in D);
( ) Paragraph E, f.o.b. origin, transportation by GBL to port
nominated in E; and/or
( ) Paragraph E, f.o.b. destination (*i.e.*, a port nominated in E).

(End of provision)

7–2003.21 *Eligibility for Preference as a Labor Surplus Concern.* In accordance with 2-201(a)Sec.K(xv) or 3-501(b)(3)Sec.K(xviii), insert the following clause.

ELIGIBILITY FOR PREFERENCE AS A LABOR SURPLUS CONCERN (1978 JUN)

Each offeror desiring to be considered for award as a labor surplus area (LSA) concern on the set-aside portion of this procurement, specified elsewhere in the schedule, shall indicate below the address(es) where costs incurred on account of manufacturing or production (by offeror or first tier subcontractor) will amount to more than fifty percent (50%) of the contract price

Name of Company:
Street Address:
City/County:
State:

(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)

CAUTION: Failure to list the location of manufacture or production and the percentage, if required, of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern.

(End of clause)

7-2003.22 *Rated or Authorized Controlled Material Orders.* Solicitations which will result in the placement of rated orders or authorized controlled material orders (see 1-307) shall contain the following provision.

RATED OR AUTHORIZED CONTROLLED MATERIAL ORDERS (1974 APR)

Contracts or purchase orders to be awarded as a result of this solicitation shall be assigned a [] DX — rating; [] DO — rating; [] DMS allotment number — (*Contracting Officer check appropriate box or boxes*) In accordance with the provisions of DPS Regulation 1 and/or DMS Regulation 1.

(End of provision)

7-2003.23 *Evaluation Factors for Award.*

(a) *Evaluation of Bids Subject to Economic Price Adjustment.* In accordance with 2-201(a)Sec. M(ii), insert the following provision.

EVALUATION OF BIDS SUBJECT TO ECONOMIC PRICE ADJUSTMENT (1974 MAR)

Notwithstanding the provisions of the clause entitled "..", bids shall be evaluated on the basis of quoted prices without an amount for economic price adjustment being added. Bids which provide for a ceiling lower than that stipulated, if a ceiling is stipulated in the clause, will also be evaluated on this basis but any resultant award will be made at the lower ceiling. Bids which provide for adjustment that may exceed the maximum adjustment stipulated, if a maximum is stipulated in the clause, or which limit or delete the downward adjustment, if a downward adjustment is stipulated in the clause, shall be rejected as nonresponsive.

(End of provision)

**Insert the title of the clause providing for economic price adjustment.*

(b) *Evaluation of Multiple Awards.* In accordance with 2-201(a)Sec. M(iii), insert the following provision.

EVALUATION OF BIDS FOR MULTIPLE AWARDS (1975 OCT)

In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $100 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs.

(End of provision)

(c) *Transit Arrangements.* In accordance with 2-201(a)Sec. M(v), insert the following provision.

TRANSIT ARRANGEMENTS (1968 JUN)

The lowest appropriate common carrier transportation costs, including through transit rates and charges where applicable, from bidder's (or offeror's) shipping points, via the transit point, to the ultimate destination will be used in evaluating bids (or proposals). Transit point(s) .... Destination(s) ....

(End of provision)

(d) *Evaluation—F.O.B. Origin.* In accordance with 2-201(a)Sec. M(vi), insert the following provision.

EVALUATION—F.O.B. ORIGIN (1974 APR)

Land methods of transportation by regulated common carrier are normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating bids (or proposals), only such methods will be considered in establishing the cost of transportation between bidder's (or offeror's) shipping point and destination (tentative or firm, whichever is applicable), in the United States (excluding Alaska and Hawaii). Such transportation cost will be added to the bid (or proposal) price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to utilize any other means of transportation or any other destination at the time of shipment.

(End of provision)

7-2003.24 *Evaluation Factors for Award.*

(a) *Destination Unknown.* In accordance with 2-201(a)Sec. M(vii), insert the following provision.

DESTINATION UNKNOWN (1968 JUN)

For the purpose of evaluating bids (or proposals), and for no other purpose, the final destination(s) for the supplies will be considered to be as follows:

....

(End of provision)

(b) *F.O.B. Origin—Carload and Truckload Shipments.* In accordance with 2-201(a)Sec. M (viii), insert the following provision.

F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS (1968 JUN)

The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer. For bid (or proposal) evaluation purposes, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals. For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published as of date of shipment. If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for bid (or proposal) evaluation, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of provision)

(c) *Shipping Point(s) Used in Evaluation of F.O.B. Origin Bids (or Proposals).* In accordance with 2-201(a)Sec. M(ix), insert the following provision.

SHIPPING POINT(S) USED IN EVALUATION OF F.O.B. ORIGIN BIDS (OR PROPOSALS) (1968 JUN)

A. If more than one shipping point or plant is designated by the bidder (or offeror) and he fails to indicate the quantity per shipping point or plant prior to bid opening (or the closing date specified for receipt of proposals), the Government will evaluate the bid (or proposal) on the basis of delivery of the entire quantity from the point or plant where cost of transportation is most favorable to the Government.

B. If the bidder (or offeror), prior to bid opening (or the closing date specified for receipt of proposals), fails to indicate any shipping point or plant, the Government will evaluate the bid (or proposal) on the basis of delivery from the plant at which the contract will be performed, as indicated in the bid or proposal. If no such plant is indicated in the bid (or proposal), then the bid (or proposal) will be evaluated on the basis of delivery from the Contractor's business address indicated on Standard Form 33 or other bid (proposal) form.

C. If the bidder (or offeror) utilizes a shipping point other than that which has been used by the Government as a basis for the evaluation of bids (or proposals), any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)

(d) *FOB Origin and/or Destination.* In accordance with 2-201(a)Sec.M(x), insert the following provision.

F.O.B. ORIGIN AND/OR DESTINATION (1968 JUN)

Bids (Offers) are invited on the basis of both, f.o.b. origin and f.o.b. destination, and the Government will award on such basis as the Contracting Officer determines to be most advantageous to the Government. A bid (An offer) on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated only on the basis submitted.

(End of provision)

7-2003.25 *Bid Guarantee.* The following provision shall be included in solicitations in accordance with 10-102.4.

BID GUARANTEE (1964 JUN)

Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder, upon acceptance of his bid by the Government within the period specified therein for acceptance (sixty days if no period is specified) fails to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten days if no period is specified) after receipt of the forms by him, his contract may be terminated for default. In such event he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

(End of provision)

7-2003.26 *Reserved.*

7-2003.27 *Cost Limitation.* In accordance with 2-201(b)(xxx) or 3-501(c)(xxv), insert the following provision.

COST LIMITATION (1974 APR)

A bid which does not contain separate bid prices for the items identified as subject to a cost limitation may be considered nonresponsive. A bidder by signing his bid certifies that each price bid on items subject to a cost limitation includes an appropriate apportionment of all applicable estimated costs, direct and indirect, as well as overhead and profit. Bids may be rejected which (i) have been materially unbalanced for the purpose of bringing affected items within cost limitations, or (ii) exceed the cost limitations unless such limitations have been waived by the Assistant Secretary of Defense (Installations and Logistics) prior to award.

(End of provision)

7-2003.28 *Additive or Deductive Items.* In accordance with 2-201(b)(xli), insert a provision substantially as follows.

ADDITIVE OR DEDUCTIVE ITEMS (1968 APR)

The low bidder for purposes of award shall be the conforming responsible bidder offering the low aggregate amount for the first or base bid item, plus or minus (in the order of priority listed in the schedule) those additive or deductive bid items providing the most features of the work within the funds determined by the Government to be available before bids are opened. If addition of another bid item in the listed order of priority would make the award exceed such funds for all bidders, it shall be skipped and the next subsequent additive bid item in a lower amount shall be added if award thereon can be made within such funds. For example, when the amount available is $100,000 and a bidder's base bid and four successive additives are $85,000, $10,000, $8,000, $6,000 and $4,000, the aggregate amount of the bid for purposes of award would be $99,000 for the base bid plus the first and fourth additives, the second and third additives being skipped because each of them would cause the aggregate bid to exceed $100,000. In any case all bids shall be evaluated on the basis of the same additive or deductive bid items, determined as above provided. The listed order of priority need be followed only for determining the low bidder. After determination of the low bidder as stated, award in the best interests of the Government may be made to him on his base bid and any combination of his additive or deductive bid for which funds are determined to be available at the time of the award, provided that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items.

(End of provision)

7-2003.29 *Telegraphic Bids.* In accordance with 2-202.2, and 3-501(b)(3)Sec.L(v), insert the following provision.

TELEGRAPHIC BIDS (1964 MAR)

Telegraphic bids may be submitted in response to this Invitation for Bids. Telegraphic bids must be received in this office prior to the time specified for opening of bids. Such bids must specifically refer to this Invitation for Bid; must include the item or sub-items, quantities and unit prices for which the bid is submitted and the time and place of delivery; and must contain all the representations and other information required by the Invitation for Bids together with a statement that the bidder agrees to all the terms, conditions and provisions of the invitation. Failure to furnish, in the telegraphic bid, the representations and information required by the Invitation for Bids may necessitate rejection of the bid. Signed copies of the Invitation for Bids must be furnished in confirmation of the telegraphic bids.

(End of provision)

This provision may be modified for negotiated procurements.

7-2003.30 *Bid Samples.*

(a) In accordance with 2-202.4(e), insert the following provision.

BID SAMPLES (1974 APR)

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be tested or evaluated to determine compliance with all characteristics listed for such test or evaluation in this Invitation for Bids.

(b) Failure of samples to conform to all such characteristics will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except that a late sample transmitted by mail may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.

(c) Products delivered under any resulting contract shall conform to the approved sample as to the characteristics listed for test or evaluation and shall conform to the specifications as to all other characteristics.

(End of provision)

(b) When bid samples are to be waived in accordance with 2-202.4(f), insert the following provision.

WAIVER OF BID SAMPLES (1974 APR)

The requirement for furnishing samples may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to the purchasing office on a previous procurement and (ii) the Contracting Officer determines that such product was previously procured or tested by the purchasing office and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids.

(End of provision)

The contracting officer may designate in lieu of purchasing office, an alternate activity or office. When considered necessary because of the nature of the products, the provision above may be limited to provide for waiving the requirement only if the product offered is produced at the same plant at which the product previously procured or tested was produced.

7-2003.31 *Requirement for Descriptive Literature.*

(a) In accordance with 2-202.5(d)(2), insert the following provision.

REQUIREMENT FOR DESCRIPTIVE LITERATURE

(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to (*).

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids.

(End of provision)

(See footnotes on following page)

*The contracting officer shall insert significant elements such as design, materials, components, or performance characteristics; or methods of manufacture, construction, assembly, or operation, as appropriate.

(b) When requirements for descriptive literature are to be waived in accordance with 2-202.5(e), the provision in (a) above shall be modified by adding the following at the end of the clause paragraph (b):

> The requirements for furnishing descriptive literature may be waived as to a bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to the purchasing office under a prior contract and the bidder identifies the contract, and (ii) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids. (1974 APR)

The contracting officer may designate in lieu of purchasing office, an alternate activity or office. A bidder may submit his bid either on the basis of the descriptive literature to be furnished or on the basis of a previously procured product. If he elects to submit his bid on one basis, he is precluded from having his bid considered on the alternative basis after bids are opened.

7-2003.32 *Notice of Small Business-Small Purchase Set-Aside.* In accordance with 1-702(c), insert the following clause.

NOTICE OF SMALL BUSINESS-SMALL PURCHASE SET-ASIDE (1980 AUG)

Quotes under this acquisition are solicited from small business concerns only, and this acquisition is to be made only from a small business concern. This action is based on Section 221(j) of Public Law 95-507. Quotes received from firms that are not small business concerns shall not be considered and shall be rejected.

(End of clause)

7-2003.33 *Reserved.*

7-2003.34 *Reserved.*

7-2003.35 *Discounts.* In accordance with 2-407.3(a), insert the following clause.

DISCOUNTS (1968 SEP)

In accordance with subparagraph (a) of the clause entitled "Discounts" in the Solicitation Instructions and Conditions (Standard Form 33-A), prompt payment discounts will be considered in the evaluation of bids, *provided* the minimum period for the offered discounts is:

* (i) ...... days from date of delivery of the supplies to carrier when acceptance is at point of origin, or

* (ii) ...... days where delivery and acceptance are at destination.

The offered discount of a successful Bidder will form a part of the award whether or not such discount was considered in the evaluation of his bid and such discount will be taken if payment is made within the discount period.

(End of clause)

*The Contracting Officer shall delete (i) or (ii) from the clause, whichever is inapplicable, when "origin only" or "destination only" delivery acceptance is solicited.

7-2003.36 *Multiple Technical Proposals.* In accordance with 2-503.1(a)(x), insert the following clause.

MULTIPLE TECHNICAL PROPOSALS (1974 APR)

In the first step of this two-step procurement, offerors are authorized and encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the offeror will be notified as to its acceptability.

(End of clause)

7-2003.37 *Step Two of Two-Step Formal Advertising*. In accordance with 2-503.2(ii), insert the following provision.

STEP TWO OF TWO-STEP FORMAL ADVERTISING (1974 APR)

THIS INVITATION FOR BIDS IS ISSUED PURSUANT TO TWO-STEP FORMAL ADVERTISING IN PART 5 OF SECTION II OF THE ARMED SERVICES PROCUREMENT REGULATION.

BIDS WILL BE ACCEPTED AND CONSIDERED ONLY FROM THOSE FIRMS WHO HAVE SUBMITTED ACCEPTABLE TECHNICAL PROPOSALS PURSUANT TO THE FIRST STEP OF SUCH PROCEDURES, AS INITIATED BY .... (*Identify the Request for Technical Proposals*). ANY BIDDER WHO HAS SUBMITTED MULTIPLE TECHNICAL PROPOSALS IN THE FIRST STEP OF THIS TWO-STEP PROCUREMENT MAY SUBMIT A SEPARATE BID COVERING EACH TECHNICAL PROPOSAL WHICH HAS BEEN DETERMINED ACCEPTABLE BY THE GOVERNMENT.

(End of provision)

7-2003.38 *Notice of Possible Standardization*. In accordance with 3-213.4, insert the following.

NOTICE OF POSSIBLE STANDARDIZATION (1975 OCT)

It is possible that the products procured through this action may be established as standard and, at the option of the (.......... *INSERT PROCURING DEPARTMENT*), subsequent procurements may be negotiated under authority of paragraph 3-213 of the Armed Services Procurement Regulation.

(End of provision)

7-2003.39 *Site Visit*. In accordance with 2-201(a)Sec.L(xii) or 3-501(b)(3)Sec.L(xiv), insert the following provision.

SITE VISIT (1969 OCT)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves as to all general and local conditions that may affect the cost of performance of the contract, to the extent such information is reasonably obtainable. In no event will a failure to inspect the site constitute grounds for a claim after award of the contract.

(End of provision)

7-2003.40 *Unnecessarily Elaborate Contractor's Proposals*. In accordance with 3-501(b)(3)Sec.L(xxii) or 3-501(c)(xxviii), insert the following provision.

UNNECESSARILY ELABORATE CONTRACTOR'S PROPOSALS/QUOTATIONS (1969 OCT)

Unnecessarily elaborate brochures or other presentations beyond that sufficient to present a complete and effective proposal or quotation are not desired and may be construed as an indication of the offeror's or quoter's lack of cost consciousness. Elaborate art work, expensive paper and bindings and expensive visual and other presentation aids are neither necessary nor wanted.

(End of provision)

7-2003.41 *Order of Precedence*. In accordance with 2-201(a)Sec.L(iii) or 3-501(b)(3)Sec.L(iii), insert the following provision.

ORDER OF PRECEDENCE (1973 APR)

In the event of an inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the Specifications); (b) Terms and Conditions of the solicitation, if any; (c) General Provisions; (d) other provisions of the contract, when attached or incorporated by reference; and (e) the Specifications.

(End of provision)

7-2003.42 *Royalty Information*. In accordance with 9-110(a)(3), insert the following provision.

ROYALTY INFORMATION (1961 AUG)

When the response to this solicitation contains costs or charges for royalties totaling more than $250, the following information shall be furnished with offer, proposal, or quotation on each separate item of royalty or license fee:

(i) name and address of licensor;
(ii) date of license agreement;
(iii) patent numbers, patent application serial numbers or other basis on which the royalty is payable;
(iv) brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
(v) percentage or dollar rate of royalty per unit;
(vi) unit price of contract item;
(vii) number of units; and
(viii) total dollar amount of royalties;

DD Form 783, Royalty Report, is approved for use in furnishing the above information. In addition, if specifically requested by the Contracting Officer prior to execution of the contract, a copy of the current license agreement and identification of applicable claims of specific patents shall be furnished.

(End of provision)

7-2003.43 *Notice of Cost/Schedule Control Systems*. In accordance with 1-331(h), insert the following provision.

NOTICE OF COST/SCHEDULE CONTROL SYSTEMS (1974 APR)

(a) The offeror shall submit a comprehensive plan for compliance with the attached criteria (DODI 7000.2 Performance Measurement for Selected Acquisitions) for the internal Cost/Schedule Control Systems which are and/or will be operational for any contract resulting from this solicitation, and which includes the C/SCSC clause set forth in ASPR 7-104.87. The offeror shall identify his existing management systems separately from proposed modifications to meet the criteria. The plan shall:

(i) describe the management systems and their application in all major functional cost areas such as engineering, manufacturing and tooling, as related to development of the work breakdown structure, planning, budgeting, scheduling, work authorization, cost accumulation, measurement and reporting of cost and schedule performance, variance analysis, and baseline control;
(ii) describe compliance with each of the criteria, preferably by cross-referencing appropriate elements in the description of systems with the items in the checklist for C/SCSC contained in AFSCP/AFLCP 173-5, DARCOM-P 715-5, NAVMAT P-5240, Cost/Schedule Control Systems Criteria Joint Implementation Guide;
(iii) identify the major subcontractors, or major subcontracted effort in the event major subcontractors have not been selected, planned for application of the criteria;
(iv) describe the proposed procedure for administration of the criteria as applied to subcontractors.

(b) If the contractor is utilizing Cost/Schedule Control Systems which have been previously accepted, or is operating such systems under a current Memorandum of Understanding, evidence of such may be submitted in lieu of the comprehensive plan mentioned above. In such event, the Contracting Officer will determine the extent to which such systems shall be reviewed to assure continued compliance with the criteria.

(c) The offeror shall provide information and assistance as requested by the Contracting Officer for evaluation of compliance with the cited criteria.

(d) The offeror's plan for Cost/Schedule Control Systems will be evaluated prior to contract award. Upon acceptance of the Cost/Schedule Control Systems, a description of the accepted systems will be referenced in the contract.

(e) Subcontractor selection for application of the C/SCSC will be by agreement between the prime contractor and the Government. The prime contractor will contractually require the selected subcontractors to comply with the criteria. However, demonstrations and reviews of these selected subcontractors' management systems may be performed by the procuring authority when requested by either the prime or subcontractor.

(End of provision)

7-2003.44 *Inconsistency Between English Version and Translation of Contract.* In accordance with 3-608.2(b)(2)(ii)(B), insert the following provision.

INCONSISTENCY BETWEEN ENGLISH VERSION AND TRANSLATION OF CONTRACT (1966 APR)

In the event of inconsistency between any terms of this contract and any translation thereof into another language, the English language meaning shall control.

(End of provision)

7-2003.45 *Invoices.* In accordance with 3-608.2(d)(ix), insert the following provision.

INVOICES (1974 APR)

Contractor's invoices must be submitted before payment can be made. Contractor will be paid on the basis of his invoice which must state (1) the starting and ending dates and (2) that orders have been placed in effect for the addressees required, or (3) that the orders will be placed in effect upon receipt of payment.

(End of provision)

7-2003.46 *Notice To Supplier.* In accordance with 3-608.3(c), insert the following provision.

NOTICE TO SUPPLIER (1971 NOV)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Procuring Contracting Officer. If you cannot perform in exact accordance with this order WITHHOLD PERFORMANCE and notify the Contracting Officer immediately, giving your quotation.

(End of provision)

7-2003.47 *Buy American - Balance of Payments Program Certificate.* Insert the following in all solicitations and resultant contracts in which the Buy American Act and Balance of Payments Program clause at 7-104.3 is used.

BUY AMERICAN - BALANCE OF PAYMENTS PROGRAM CERTIFICATE (1980 OCT)

(a) The offeror hereby certifies that each end product, except the end products listed below, is a domestic end product (as defined in the clause entitled "Buy American Act and Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

Excluded End Products

Line Item No.	Country of Origin
____________________	____________________
____________________	____________________
____________________ (List as necessary)	____________________

(b) Offers will be evaluated by giving certain preferences to domestic end products and foreign qualifying country end products over foreign nonqualifying country end products. In order to obtain such preferences in the evaluation of each excluded end product listed in (a) above, it is necessary that offerors identify and certify, below, those excluded end products identified above that are qualifying country end products or they will be deemed nonqualifying country end products. Offers must certify by inserting the applicable line item numbers in the appropriate brackets:

(i) The offeror certifies that the following supplies qualify as "participating country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program." [______________________]
(Insert line item no.)

(ii) The offeror certifies that the following supplies qualify as "FMS/offset arrangement country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program," if the Government makes the necessary waivers. [______________________]
(Insert line item no.)

(iii) The offeror certifies that the following supplies qualify as "defense cooperation country end products" as that term is defined in the clause entitled "Buy American Act and Balance of Payments Program." [______________________]
(Insert line item no.)

(c) Offers will be evaluated in accordance with the policies and procedures of Section VI.

(End of certificate)

7-2003.48 *Domestic Wool Preference*. In accordance with 6-304.2, complete and insert the following clause.

DOMESTIC WOOL PREFERENCE (1958 MAR)

(a) It is Congressional policy that, in Department of Defense procurements, preference shall be given to wool grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico, to the extent that articles containing such wool can be procured as and when needed at United States market prices.

(b) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is not more than 10 percent above the average of the prices (for usable grades and types) which reflect the current incentive price established by the Secretary of Agriculture, award will be made only on bids or proposals offering domestically produced articles of which the wool component is 100 percent domestic wool, *provided* that such bids or proposals are considered reasonable and otherwise acceptable.

(c) If, on the date of opening of bids or evaluation of proposals, the average market price of domestic wool of usable grades (as reported by grade and type in the four issues of the Department of Agriculture "Market News" immediately preceding the date of bid opening or evaluation of proposals) is more than 10 percent above the average of the prices (for usable grades and types) which reflect the current incentive price, or to the extent that the Government's requirement cannot be filled by awards based on paragraph (b) hereof, there will be added to each bid or proposal offering articles of which the wool component is 100 percent foreign wool an evaluation factor of $....... per yard or per item, and there will be added to each bid or proposal offering articles of which the wool component is a blend of domestic and foreign wool that part of the evaluation factor which is in direct proportion to the percentage of foreign wool to be used, and award will be made to the low acceptable bidder.

(d) For the purposes of (b) and (c) above, the average market price of domestic wool of usable grades shall be the average market price of the representative types and grades set forth in Armed Services Procurement Regulation 6-304.2(f) within that one of the categories therein set forth which includes wool which would meet the specifications, and the average of the prices which reflect the current incentive price established by the Secretary of Agriculture shall be the average of the prices set forth in ASPR 6-304.2(f) for that category.

(e) While bids or proposals offering articles using foreign wool may be considered and evaluated, as stated above, all stages of manufacturing of wool (whether foreign or domestic) must be performed in the United States, its possessions, or Puerto Rico, as required by the contract clause entitled "Preference for Certain Domestic Commodities." This requirement is satisfied as to wool noils, reprocessed or reused wool if the reprocessing (i.e., garnetting or combing) and ensuing manufacture is performed in the United States, its possessions, or Puerto Rico.

(f) The Secretary has determined that, to the extent that any foreign wool is used under an award made pursuant to paragraph (c) hereof, a satisfactory quality and sufficient quantity of domestic wool cannot be procured as and when needed at United States market prices.

(End of clause)

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7-2003.49 *Supplies to be Accorded Duty-Free Entry.* When the *Duty Free Entry for Certain Specified Items* clause in 7-104.31(a) is used, the following clause shall be inserted in the Schedule.

SUPPLIES TO BE ACCORDED DUTY-FREE ENTRY (1965 DEC)

In accordance with paragraph (a) of the clause hereof entitled "Duty-Free Entry for Certain Specified Items," the following supplies are hereby identified as supplies to be accorded duty-free entry: ....

(End of clause)

7-2003.50 *United States End Product Certification for Purchases in Implementation of a Military Assistance Program.* In accordance with 6-703.3, insert the following provision.

UNITED STATES PRODUCTS CERTIFICATE (MILITARY ASSISTANCE PROGRAM) (1962 DEC)

To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the bidder or offeror hereby certifies that each such item furnished will be a United States end product (as defined in the contract clause entitled United States Products); that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and that he is a domestic concern.

(End of provision)

7-2003.51 *United States End Products Requirement for Purchases in Implementation of a Military Assistance Program.* The following clause shall be inserted in all contracts for end products for the Military Assistance Program other than those excepted pursuant to 6-702.

UNITED STATES PRODUCTS (MILITARY ASSISTANCE PROGRAM) (1962 DEC)

(a) To the extent that the Government specifies the items being purchased are in implementation of the Military Assistance Program, the Contractor agrees that there will be delivered under this contract only United States end products.

(b) For the purpose of this clause:

- (i) "components" means those articles, materials, and supplies, which are directly incorporated in end products;
- (ii) "end products" means those articles, materials, and supplies, which are acquired under this contract for public use; and
- (iii) a "United States end product" means
  - (A) an unmanufactured end product which has been mined or produced in the United States; and
  - (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds fifty percent (50%) of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(End of clause)

7-2003.52 *Reserved.*

7-2003.53 *Reserved.*

7-2003.54 *Reserved.*

7-2003.55 *Reserved.*

7-2003.56 *Reserved.*

7-2003.57 *Applicability of Complete Wage Rate Decision.* In accordance with 18-704.2(f), insert the following provision.

APPLICABILITY OF COMPLETE WAGE RATE DECISION (1974 APR)

In addition to the wage rates in this solicitation, the complete decision of the Secretary of Labor contains wage rates for other classes of laborers and mechanics. Because it does not appear

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that the work called for by this solicitation will require the use of such other classes, the wage rates applicable to them have not been reprinted herein. However, if any such classes of laborers or mechanics actually are employed to perform work under the contract resulting from this solicitation, payment will be required as specified in this clause entitled "*Davis-Bacon Act*" at wage rates contained in the complete decision of the Secretary of Labor. Offerors desiring the complete decision may request it from the Contracting Officer.

(End of clause)

7-2003.58 *Advertised Solicitations for Mortuary Services.* In accordance with 22-502, insert the following clause (appropriately modified for negotiated procurements) in solicitations for mortuary services.

AWARD TO SINGLE BIDDER (1965 OCT)

Subject to the provisions contained herein, award shall be made to a single bidder. Bids must include unit prices for each item listed in order that bids may be properly evaluated. Failure to do this shall be cause for rejection of the entire bid. Bids shall be evaluated on the basis of the estimated quantities shown and award shall be made to that responsible bidder whose total aggregate price is low.

(End of clause)

7-2003.59 *Provisions for Shipment or Storage of Personal Property* (see 22-600.3).

(a) The following provision for evaluation of bids shall be included in all solicitations.

EVALUATION OF BIDS (1977 APR)

(a) Bids will be evaluated on the basis of total aggregate price of all items within an area of performance under a given schedule. A bidder must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that schedule. Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the schedule.

(b) In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $100) would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs.

(End of provision)

(b) When "additional services" items are added to any schedule, the following provision shall be included in the solicitation, (see 22-601.2(b)(ii)).

EVALUATION OF BIDS (1977 APR)

(a) Bids will be evaluated on the basis of total aggregate price of all items within an area of performance under a given schedule. A bidder must bid on all items within a specified area of performance for a given schedule. Failure to do so shall be cause for rejection of the bid for that area of performance of that schedule. Any bid which stipulates minimum charges or graduated prices for any or all items shall be rejected for that area of performance within the schedule.

(b) In addition to other factors, bids will be evaluated on the basis of advantages or disadvantages to the Government that might result from making more than one award (multiple awards). For the purpose of making this evaluation, it will be assumed that the sum of $100 would be the administrative cost to the Government for issuing and administering each contract awarded under this invitation, and individual awards will be for the items and combinations of items which result in the lowest aggregate price to the Government, including such administrative costs.

(c) Notwithstanding (a) above, when "additional services" are added to any schedule, such "additional services" items will not be considered in the evaluation of bids.

(End of clause)

(c) The following provision governing award shall be included in all solicitations.

AWARD (1977 APR)

Award shall be made to the qualified low bidder by area under each of the specified schedules to the extent of his stated guaranteed daily capability as provided herein and the clause entitled "*Estimated Quantities.*" The Government reserves the right to make an award of two or more areas to a single bidder if such award will result in an overall lower estimated cost to the Government. The Government also reserves the right to award additional contracts, as a result of this solicitation, to the extent necessary to meet its estimated maximum daily requirements.

(End of provision)

7-2003.60 *Solicitation Provisions for Laundry and Dry Cleaning Services.* Pursuant to 22-702, insert the following provision in all solicitations for laundry and dry cleaning services.

INSTRUCTIONS TO BIDDERS (1967 APR)

(a) Bids must include unit prices for each item in a lot. Failure to bid on any item in a lot shall be cause for rejection of the bid on that lot. Bids shall be evaluated on the basis of the estimated quantities stated in the invitation. Subject to the provision contained herein, award generally shall be made to a single bidder for all lots. The Government reserves the right, however, to award by individual lot when the Contracting Officer determines that this is more advantageous to the Government.

(b) Upon application to the Contracting Officer, types of articles to be serviced may be inspected prior to bidding.

(End of provision)

7-2003.61 *Predetermination of Rights in Technical Data.* In accordance with 9-202.2(d)(3), insert the following provision.

PREDETERMINATION OF RIGHTS IN TECHNICAL DATA (1976 JUL)

(a) The offeror is requested to identify in his proposal which of the below listed data (including data to be furnished in whole or in part by a subcontractor) when delivered, he intends to identify as limited rights data in accordance with paragraph (b) of the "Rights in Technical Data and Computer Software" clause of this Solicitation. This identification need not be made as to data which relate to standard commercial items which are manufactured by more than one source of supply.

(*The Solicitation should list here that technical data or portions thereof with respect to which the Government proposes use of the predetermination procedure. Data which clearly comes within paragraph (b)(1) of the "Rights in Technical Data and Computer Software" clause and would therefore be acquired with unlimited rights should not be listed.*)

(b) Limited rights data may be identified as such, pursuant to (a) above only if it pertains to items, components or processes developed at private expense. Nevertheless, it cannot be so identified if it comes within paragraph (b)(1) of the "Rights in Technical Data and Computer Software" clause. At the request of the Contracting Officer or his representative, the offeror agrees to furnish clear and convincing evidence that the data which will be so identified comes within the definition of limited rights data.

(c) The listing of a data item in paragraph (a) above does not mean that the Government considers such item to come within the definition of limited rights data.

(End of provision)

7-2003.62 *Options to Award and Pay in United States Owned Foreign Currency.* In accordance with 6-1104, insert the following provision.

OPTION TO AWARD AND PAY IN FOREIGN CURRENCY (1974 APR)

(a) Offerors are required to state their price in United States dollars. Such price may also be stated wholly in the currency of the countries listed in the Schedule, or in a combination of United States dollars and the currency of any of the listed countries.

(b) Offerors shall state separately the United States dollar content, if any, in United States dollars. The term "United States dollar content" means the United States dollar cost to an offeror for United States end products or services (including costs of transportation furnished by United States-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

(c) The Contracting Officer reserves the right to award to that responsive offeror willing to accept payment in whole or in part in a currency of any of the listed countries and whose offer is considered the most advantageous to the United States Government, even though the total price of the accepted offer may be more than the price of an offer received in United States dollars.

(End of clause)

7-2003.63 *Progress Payments Exclusively for Small Business.* In accordance with E-504.3, insert the following provision.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS EXCLUSIVELY FOR SMALL BUSINESS (1974 APR)

The Progress Payments clause will be available to Small Business concerns only, and will not be included for contractors who are not Small Business concerns.

(End of provision)

7-2003.64 *Progress Payments.* In accordance with E-504.4, insert the following notice.

Any change, addition, or deletion to this clause is subject to the prior approval requirements outlined in Appendix E, Part 2.

PROGRESS PAYMENTS* (1974 APR)

The need for progress payments conforming to regulations (Appendix E, Armed Services Procurement Regulation) will not be considered as a handicap or adverse factor in the award of contracts. Authorized progress payments will not be a factor for evaluation of bids. The appropriate "Progress Payment" clause attached hereto will be included in the contract awarded in the manner herein provided, however, the clause shall be inoperative during the time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs. For Small Business concerns the clause designated "Progress Payments for Small Business Concerns" (7-104.35(b)) shall be used for such Contractors. For Contractors who are not Small Business concerns, the clause designated "Progress Payments for Other Than Small Business Concerns" (7-104.35(a)) shall be used.

(End of notice)

*Do not use the last sentence of this notice for procurements mentioned in E-504.2 and E-504.3.

7-2003.65 *Solicitation of Bids and Proposals*. The following provision shall be included in all solicitations for construction in the United States except when Standard Form 19 is used.

NOTICE REGARDING BUY AMERICAN ACT (1970 SEP)

The Buy American Act (41 U.S.C. 10a–10d) generally requires that only domestic construction material be used in the performance of this contract. Exception from the Buy American Act shall be permitted only in the case of nonavailability of domestic construction materials. A bid or proposal offering nondomestic construction material will not be accepted unless specifically approved by the Government. When a bidder or offeror proposes to furnish nondomestic construction material, his bid or proposal must set forth an itemization of the quantity, unit price, and intended use of each item of such nondomestic construction material. When offering nondomestic construction material pursuant to this paragraph, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable under this paragraph will cause rejection of the entire bid.

(End of provision)

7-2003.66 *Requirement for Technical Data Certification*. In accordance with 3-501(b)(3)Sec.K(xii), insert the following provision.

REQUIREMENT FOR TECHNICAL DATA CERTIFICATION (1974 APR)

The offeror shall submit with his offer a certification as to whether he has delivered or is obligated to deliver to the Government under any contract or subcontract the same or substantially the same technical data included in his offer; if so, he shall identify one such contract or subcontract under which such technical data was delivered or will be delivered, and the place of such delivery.

(End of provision)

7-2003.67 *Cost Accounting Standards*

(a) *Disclosure Statement - Cost Accounting Practices and Certification.* In accordance with 3-1203 (a) insert the following solicitation provision:

DISCLOSURE STATEMENT - COST ACCOUNTING PRACTICES AND CERTIFICATION (1978 MAR)

Any contract in excess of $100,000 resulting from this solicitation except (i) when the price negotiated is based on: (A) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (B) prices set by law or regulations; (ii) contracts awarded to small business concerns (as defined in DAR 1-701.1); or (iii) contracts which are otherwise exempt (see 4 CFR 331.30(b)) shall be subject to the requirements of the Cost Accounting Standards Board. Any offeror submitting a proposal, which, if accepted, will result in a contract subject to the requirements of the Cost Accounting Standards Board, must, as a condition of contracting, submit a Disclosure Statement as required by regulations of the Board. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation (see (I) below) unless (i) the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards exceeding the monetary exemption for disclosure as established by the Cost Accounting Standards Board (see (II) below); (ii) the offeror exceeded the monetary exemption in the cost accounting period immediately preceding the cost accounting period in which this proposal was submitted but, in accordance with the regulations of the Cost Accounting Standards Board, is not yet required to submit a Disclosure Statement (see (III) below; (iii) the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal (see (IV) below); or (iv) postaward submission has been authorized by the Contracting Officer. See 4 CFR 351.70 for submission of copy of Disclosure Statement to the Cost Accounting Standards Board.

CAUTION: A practice disclosed in a Disclosure Statement shall not be deemed to be, by virtue of such disclosure, a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

Check the appropriate box below:

( )I. CERTIFICATE OF CONCURRENT SUBMISSION OF DISCLOSURE STATEMENT(S)

The offeror hereby certifies that he has submitted, as a part of his proposal under this solicitation, copies of the Disclosure Statement(s) as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) (see DoD Directory of Contract Administration Components (DoD 4105.59H)); and (ii) one copy to the cognizant contract auditor.

Date of Disclosure Statement(s): ....

Name(s) and Address(es) of Cognizant ACO(s) where filed:.....................

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement(s).

( )II. CERTIFICATE OF MONETARY EXEMPTION

The offeror hereby certifies that he, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated national defense prime contracts and subcontracts subject to Cost Accounting Standards totaling more than $10 million in his cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if his status changes prior to an award resulting from this proposal he will advise the contracting officer immediately.

CAUTION: Offerors who submitted a Disclosure Statement under the filing requirements previously established by the Cost Accounting Standards Board may claim this exemption only if the dollar volume of CAS-covered national defense prime contract and subcontract awards in their preceding cost accounting period did not exceed the $10 million threshold and the amount of this award will be less than $10 million. Such offerors will continue to be responsible for maintaining the Disclosure Statement and following the disclosed practices on CAS-covered prime contracts and subcontracts awarded during the period in which a Disclosure Statement was required.

( )III. **CERTIFICATE OF INTERIM EXEMPTION**

The offeror hereby certifies that (i) he first exceeded the monetary exemption for disclosure, as defined in (II) above, in his cost accounting period immediately preceding the cost accounting period in which this proposal was submitted, and (ii) in accordance with the regulations of the Cost Accounting Standards Board (4 CFR 351.40(f)), he is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period he will immediately submit a revised certificate to the Contracting Officer, in the form specified under (I) above or (IV) below, as appropriate, to vertify his submission of a completed Disclosure Statement.

CAUTION: Offerors may not claim this exemption if they are currently required to disclose because they were awarded a CAS-covered national defense prime contract or subcontract of $10 million or more in the current cost accounting period. Further, the exemption applies only in connection with proposals submitted prior to expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

( )IV. **CERTIFICATE OF PREVIOUSLY SUBMITTED DISCLOSURE STATEMENT(S)**

The offeror hereby certifies that the Disclosure Statement(s) were filed as follows:

Date of Disclosure Statement(s):.............
Name(s) and Address(es) of Cognizant
ACO(s) where filed:.....................

The offeror further certifies that practices used in estimating cost in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement(s).

(End of provision)

(b) *Cost Accounting Standards - Exemption for Contracts of $500,000 or Less.* In accordance with 3-1204.1(a)(vii)(A), insert the following provision:

COST ACCOUNTING STANDARDS - EXEMPTION FOR CONTRACTS OF $500,000 OR LESS (1978 MAR)

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption to the Cost Accounting Standards clause (7-104.83(a)(1) under the provisions of 4 CFR 331.30(b)(8) is claimed. Failure to check the box below shall mean that the resultant contract is subject to the Cost Accounting Standards clause or that the offeror elects to comply with such clause.

( ) The offer hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 4 CFR 331.30(b)(8) and certifies that he has received notification of final acceptance of all deliverable items on (i) all prime contracts or subcontracts in excess of $500,000 which contain the Cost Accounting Standards clause, and (ii) all prime contracts or subcontracts of $500,000 or less awarded after January 1, 1975 which contain the Cost Accounting Standards clause. The offeror further certifies he will immediately notify the Contracting Officer, in writing, in the event he is awarded any other contract or subcontract containing the Cost Accounting Standards clause subsequent to the date of this certificate but prior to the date of any award resulting from this proposal.

(End of provision)

(c) *Cost Accounting Standards - Exemption for Modified Contract Coverage.* In accordance with 3-1204.1(b), insert the following solicitation provision:

COST ACCOUNTING STANDARDS - ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE (1978 MAR)

If the offeror is eligible to use the modified provisions of 4 CFR 332 and elects to do so, he shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) in lieu of the Cost Accounting Standards clause (7-104.83(a)(1)).

( ) The offeror hereby claims an exemption from the Cost Accounting Standards clause (DAR 7-104.83(a)(1)) under the provisions of 4 CFR 331.30(b)(2), and certifies that he is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause (DAR 7-104.83(a)(2)) because (i) during his cost accounting period immediately preceding the period in which this proposal was submitted, he received less than $10 million in awards of CAS-covered national defense prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of his total sales during that cost accounting period. The offeror further certifies that if his status changes prior to an award resulting from this proposal he will advise the contracting officer immediately.

CAUTION: Offerors may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a contract of $10 million or more or if, during their current cost accounting period, they have been awarded a single CAS-covered national defense prime contract or subcontract of $10 million or more.

(End of provision)

(d) In accordance with 3-1213(a), insert the following provision in all solicitations containing the clause in 7-2003.67(a).

ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS (1978 MAR)

The offeror shall indicate below whether award of the contemplated contract would require, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause (7-104.83(a)(1)), a change in his established cost accounting practices affecting existing contracts and subcontracts.

( ) YES ( ) NO

NOTE: If the offeror has checked "yes" above, and is awarded the contemplated contract, he will be required to comply with the *Administration of Cost Accounting Standards* clause (7-104.83(b)).

(End of provision)

7-2003.68 *Industrial Preparedness Production Planning*. In accordance with 3-501(b)(3)Sec.L(xxxii), insert the following provision:

INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING (1974 APR)

This solicitation includes an item for industrial planning in support of the Industrial Preparedness Production Planning program. Offerors are cautioned to carefully review Section E of the Schedule and the attached Industrial Preparedness Program Planning Exhibit. Failure to propose on the Industrial Preparedness Production Planning line item set forth in the Schedule may result in rejection of the proposal.

(End of provision)

7-2003.69 *Industrial Preparedness Production Planning*. In accordance with 2-201(a)Sec.L(xxiv), insert the following provision:

INDUSTRIAL PREPAREDNESS PRODUCTION PLANNING (1974 APR)

This solicitation includes an item for industrial planning in support of the Industrial Preparedness Production Planning program. Bidders are cautioned to carefully review Section E of the Schedule and the attached Industrial Preparedness Production Planning Exhibit or Attachment. Failure to bid on the Industrial Preparedness Production Planning line item set forth in the Schedule may result in rejection of the bid.

(End of provision)

7-2003.70 *Evaluation of Transportation Costs.* In accordance with 19-208.4(b), insert the following provision.

EVALUATION OF TRANSPORTATION COSTS (1974 APR)

Costs of transporting supplies to be delivered under this contract will not be an evaluation factor for award.

(End of provision)

7-2003.71 *Clean Air and Water Certification.* In accordance with 1-2302.1, insert the following provision.

CLEAN AIR AND WATER CERTIFICATION (1977 JUN)

Applicable if the bid or offer exceeds $100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed $100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.

The bidder or offeror certifies as follows:

(i) any facility to be utilized in the performance of this proposed contract is—( ), (is not—( ), listed on the Environmental Protection Agency List of Violating Facilities;

(ii) he will promptly notify the Contracting Officer, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, U. S. Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(iii) he will include substantially this solicitation certification, including this paragraph (iii), in every nonexempt subcontract.

(End of provision)

7-2003.72 *Privacy Act Notification.* In accordance with 1-327, the following notification shall be included in every solicitation and resulting contract, and in each contract awarded without a solicitation, where the statement of work requires the design, development, or operation of a system of records on individuals for an agency function:

PRIVACY ACT NOTIFICATION (1975 NOV)

This procurement action requires the Contractor to do one or more of the following: design, develop, or operate a system of records on individuals to accomplish an agency function in accordance with the Privacy Act of 1974, Public Law 93-579, December 31, 1974, (5 U.S.C. 552a) and applicable agency regulations. Violations of the Act may involve the imposition of criminal penalties.

7-2003.73 *Solicitation Provision for Dismantling, Demolition or Removal of Improvements.* In accordance with 4-503, insert the following provision for solicitations for dismantling, demolition or removal of improvements.

BONDS OR OTHER SECURITY (1977 APR)

A bid guarantee in the penal sum of $........ must accompany the bid. Within ten (10) days after receipt of a notice of award, the Contractor shall furnish a performance bond (Standard Form 25) in the penal sum of $....... and payment, in full, of any sum due the Government. The bond of any surety company holding a certificate of authority from the Secretary of the Treasury as an acceptable surety on Federal bonds will be accepted. Individual sureties will be accepted if each such surety deposits with the Contracting Officer cash, bonds, or notes of the United States, or certified check drawn to the order of the office designated for contract administration, or such other security as the Contracting Officer may deem necessary, for the required amount of the guaranty, under the agreement that the collateral so deposited shall remain in the possession and control of the Treasurer of the United States until the completion of the contract. The formal contract and notice to proceed will be issued on receipt of an acceptable performance bond and payment of any sum due the Government.

(End of provision)

7-2003.74 *Small Disadvantaged Business Concern.* Include the following representation in accordance with 1-707.3(f).

SMALL DISADVANTAGED BUSINESS CONCERN (1980 AUG)

(a) The offeror represents that he ( ) is, ( ) is not, a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern—

(1) that is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more such individuals.

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e. American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (i.e. U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(End)

7-2003.75 *Reserved.*

7-2003.76 *Identification of Restricted Rights Computer Software.* In accordance with 9-603(b), insert the following provision.

IDENTIFICATION OF RESTRICTED RIGHTS COMPUTER SOFTWARE (1977 APR)

The offeror's attention is called to the requirement in the "*Rights in Technical Data and Computer Software*" clause that any restrictions on the Government concerning use or disclosure of computer software which was developed at private expense and is to be delivered under the contract must be set forth in an agreement made a part of the contract, either negotiated prior to award or included in a modification of the contract before such delivery. Therefore, the offeror is requested to identify in his proposal to the extent feasible any such computer software which was developed at private expense and upon the use of which he desires to negotiate restrictions, and to state the nature of the proposed restrictions. If no such computer software is identified, it will be assumed that all deliverable computer software will be subject to unlimited rights.

(End of clause)

7-2003.77 *Licenses and Permits.* In accordance with 22-600.3, insert the following clause.

LICENSES AND PERMITS (1977 APR)

Offerors without necessary operating authority may submit offers, but the offerors shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits prior to award of a resultant contract and for complying with all laws, ordinances, statutes and regulations in connection with the furnishing of the services herein.

(End of clause)

7-2003.78 *Notice of Compensation for Professional Employees.* In accordance with 12-1007.3, insert the following notice.

NOTICE OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (1978 JUN)

Note the provisions relating to evaluation of compensation for professional employees set forth elsewhere in this Solicitation. Failure to comply with such provisions may constitute sufficient cause to justify non-selection of a proposal. The total compensation plan required to be submitted by the offeror will be viewed as being within the purview of Public Law 87-653.

(End of notice)

7-2003.79 *Evaluation of Compensation for Professional Employees.* In accordance with 12-1007.3, insert the following provision.

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (1978 JUN)

(a) Total compensation (salary and fringe benefits) of professional employees under service contracts may, in some cases be lowered by recompetition of such contracts. Such lowering of compensation can be detrimental in obtaining the necessary quality of professional services needed for adequate performance of service contracts. It is, therefore, in the best interest of the Government that professional employees, as defined in 29 CFR 541, be properly and fairly compensated in such contracts. As a part of their proposals, offerors will submit a "Total Compensation Plan" (salaries and fringe benefits) for such professional employees for evaluation purposes. The Government will assess the "Total Compensation Plan" to assure that such compensation reflects a sound management approach and an understanding of the requirements to be performed. It will include an assessment of the offeror's ability to provide uninterrupted work of high quality. The total compensation proposed will be evaluated in terms of enhancing recruitment and retention of personnel and its realism and consistency with a total plan for compensation (both salaries and fringe benefits).

(b) In establishing compensation levels for professional employees, the total compensation (both salaries and fringe benefits) proposed, shall reflect a clear understanding of the requirement of the work to be accomplished and the suitability of the proposed compensation structure to obtain and retain qualified personnel to meet mission objectives. The salary rates or ranges must recognize the distinct differences in professional skills and the complexity of varied disciplines as well as job difficulty. Proposals offering total compensation levels less than currently being paid by the predecessor contractor, if any, for the same work will be evaluated, in addition to the above, on the basis of maintaining program continuity, uninterrupted work of high quality, and availability of required competent professional employees. Offerors are cautioned that instances of lowered compensation for essentially the same professional work may be considered a lack of sound management judgment in addition to indicating a lack of understanding of the requirement.

(c) Proposals which are unrealistically low or do not reflect a reasonable relationship of compensation to the professional job categories such as to impair the contractor's ability to recruit and retain competent professional employees, may be viewed as reflecting a failure to comprehend the complexity of the contract requirements. The Government is concerned with the quality and stability of the work force to be employed on this contract. The compensation data required will be used in evaluation of the offeror's understanding of the contract requirements.

(d) An assessment of the potential for adverse effect upon performance and maintenance of the required numbers of employees with requisite skills resulting from an unrealistically low compensation structure will also be made.

(End of provision)

7-2003.80 *Woman-Owned Business.* In accordance with 2-201(a)Sec.K(xviii), 2-201(b)(lviii), or 3-501(b)(3)Sec.K(xxi), insert the following provision in all solicitations except those made outside the United States.

WOMAN-OWNED BUSINESS (1978 SEP)

The offeror represents that the firm submitting this offer ( ) is, ( ) is not, a woman-owned business. A woman-owned business is a business which is, at least, 51 percent owned, controlled and operated by a woman or women. Controlled is defined as exercising the power to make policy decisions. Operated is defined as actively involved in the day-to-day management. For the purposes of this definition, businesses which are publicly owned, joint stock associations, and business trusts are exempted. Exempted businesses may voluntarily represent that they are, or are not, women-owned if this information is available.

(End of provision)

7-2003.81 *Percent Foreign Content.* In accordance with 2-201(a)Sec.K(xix), 2-201(b)(lix), or 3-501(b)(3)Sec.K(xxii), insert the following provision in all solicitations except those made outside the United States.

PERCENT FOREIGN CONTENT (1978 SEP)

Approximately ---------- percent of the proposed contract price represents foreign content or effort.

(End of provision)

7-2003.82 Recovered Material. The following certification shall be inserted in solicitations as required by 1-2500.5(b):

RECOVERED MATERIAL (1979 MAR)

The Contractor certifies by signing this bid/proposal/quotation that recovered materials, as defined in DAR 1-2500.4, will be used as required by the applicable specifications.

7-2003.83 *Reserved.*

7-2003.84 *Statement of Equivalent Rates for Federal Hires.* In accordance with 12-1005.2(b)(3), insert the following provision in all solicitations for the acquisition of services to which the clause at 7-1903.41(a) applies:

> RATES FOR EQUIVALENT FEDERAL HIRES (1979 SEP)
>
> In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this solicitation incorporates a statement of Federal employee classes, incorporating wages paid and fringe benefits provided to each class. These Federal classes are comparable to the service employee classes expected to be employed under the contract resulting from this acquisition. (THE STATEMENT IS FOR INFORMATION ONLY).

(End of provision)

7-2003.85 *SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).* In accordance with 12-1005.2(b)(5), insert the following provision in all solicitations for the acquisition of services to which—

(i) the clause at 7-1903.41(a) applies;

(ii) the contract resulting from this solicitation succeeds an ongoing contract for substantially the same services;

(iii) the incumbent contractor has negotiated or is negotiating a CBA with some or all of its service employees; and

(iv) all applicable Department of Labor wage determinations have been requested but not received.

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (1979 SEP)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor ______________________________ and the ______________________________(union). Copies of the agreement can be obtained from the Contracting Officer. Pursuant to DOL Regulation, 29 CFR 4.1c, the economic terms of that agreement (or any new CBA negotiated 10 or more days prior to the opening of bids, or the commencement of the contract in the case of negotiated contracts, exercise of options, or extensions) will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined, after a hearing pursuant to section 4(c) of the SCA, that they are substantially at variance with the wages prevailing in the area.

(End of provision)

7-2003.86 Reserved.
7-2003.87 Reserved.
7-2003.88 Reserved.
7-2003.89 Reserved.

7-2003.90 Data Universal Numbering System (DUNS) Number Reporting. In accordance with 2-201 and 3-501, insert the following provision.

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER REPORTING (1980 DEC)

In the block with its name and address, the offeror should supply the Data Universal Numbering System (DUNS) Number applicable to that name and address. The DUNS Number should be preceded by "DUNS:". If the offeror does not have a DUNS Number, it may obtain one from any Dun and Bradstreet branch office. No offeror should delay the submission of its offer pending receipt of its DUNS Number.

(End of provision)

Part 21—Dismantling, Demolition or Removal of Improvements

7-2100 Scope of Part. This Part sets forth uniform contract clauses for use in connection with contracts for dismantling, demolition or removal of improvements (see Section IV Part 5, and 16-502).

7-2101 Required Clauses. The following clauses shall be inserted in all contracts for dismantling, demolition or removal of improvements.

7-2101.1 *Definitions.* Insert the clause in 7-602.1.

7-2101.2 *Statement of Work.*

STATEMENT OF WORK (1976 OCT)

(a) The Contractor shall furnish all labor, material and equipment and perform all work required for the dismantling, demolition and removal, or both, of ....(*identify property*)............... .

(b) The work shall be commenced .... and shall be completed not later than ....

(c) All property retained by the Government will be conditioned, handled and stored by the Contractor in such manner and place as prescribed in the specifications.

(End of clause)

In accordance with 4-503, where the contractor is required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property (see 7-2101.13) during the performance of the contract, the following paragraph (d) shall be added to the above clause.

(d) A performance bond or other security in the penal sum of .... dollars ($........) shall be furnished by the Contractor.

7-2101.3 *Payments.*

(a) In accordance with 4-504 insert the following clause in contracts providing for payment by the Government to the contractor. However, if it is determined that all the material resulting from the dismantling or demolition work is to be retained by the Government and the contractor is to be entirely compensated by payments received under the contract, paragraph (b) of the clause shall be deleted.

PAYMENT BY GOVERNMENT TO CONTRACTOR (1976 OCT)

(a) In (full) (part) (*delete one*) consideration of the performance of the work called for in the Statement of Work, the Government will pay to the Contractor...................(words)..............(figures).......... Unless otherwise provided in the specifications, progress payments will be made monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. In making such progress payments there shall be retained 10 per cent (10%) of the estimated amount until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, he may authorize such payment to be made in full without retention of a percentage. Also, whenever the work is substantially complete, the Contracting Officer shall retain an amount he considers adequate for the protection of the Government and, at his discretion, may release to the Contractor all or a portion of any excess amount. Furthermore, on completion and acceptance of each separate unit or other division of the contract on which the price is stated separately in the contract, payment may be made therefor without retention of a percentage.

*(b) In further consideration of the performance hereof, the Contractor shall receive title to all property to be dismantled or demolished which is not specifically designated as being retained by the Government, said title to vest in the Contractor immediately upon the Contractor's receipt of the notice of award and furnishing of performance bond. The Government will not be responsible for the condition of or any loss or damage to such property from any cause whatsoever. In the event the Contractor does not wish to remove from the site any part of the property he has acquired hereunder, the Contracting Officer may, upon written request, grant the Contractor permission to leave such property on the premises. The Contractor agrees as a condition of the granting of such permission to waive any right, title, claim or interest in and to such property.

Delete if inapplicable.

(c) Upon completion and acceptance of all work required hereunder, final payment of the amount due the Contractor under this contract will be made upon the presentation of a properly executed voucher therefor, and in addition, if requested, a release of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, in stated amounts as may be specifically excepted by the Contractor from the operation of the release.

(End of clause)

(b) In accordance with 4-504, insert the following clause in contracts providing for payment of compensation by the contractor to the Government in consideration of the right to salvage and remove for his own use the materials resulting from the dismantling or demolition operation. In special circumstances where it will be advantageous to the Government, the clause may be modified to provide for payments by the contractor to the Government in increments and for transfer of title to the contractor for increments of property only upon receipt of such payments.

PAYMENT BY CONTRACTOR TO GOVERNMENT (1976 OCT)

(a) The Contractor shall receive title to all property to be dismantled or demolished covered by this contract not specifically designated in the specifications as being retained by the Government, said title to vest in the Contractor immediately upon receipt of the notice of award and furnishing of performance bond. The Government will not be responsible for the condition of or any loss or damage to such property from any cause whatsoever. All property acquired by the Contractor hereunder shall be removed from the site by the Contractor promptly, as the storage of such property on the site will not be permitted beyond the completion date hereof. In the event the Contractor does not wish to remove from the site any part of the property he has acquired hereunder, the Contracting Officer may, upon written request, grant the Contractor permission to leave such property on the premises. The Contractor agrees as a condition of the granting of such permission to waive any right, title, claim or interest in and to such property.

(b) The Contractor shall perform the work called for in the "*Statement of Work*" clause of this contract and, unless otherwise provided in the specifications, within .... days of the receipt of notice of award and before proceeding with dismantling or demolition, shall pay.............. .....(words)..................(figures)...........

Checks shall be made payable to the office designated for contract administration and shall be forwarded to the Contracting Officer.

(End of clause)

7-2101.4 *Specifications and Drawings.* Insert the clause in 7-602.2.

7-2101.5 *Changes.* Insert the clause in 7-602.3.

7-2101.6 *Differing Site Conditions.* Insert the clause in 7-602.4.

7-2101.7 *Termination for Default — Damages for Delay — Time Extensions.*

TERMINATION FOR DEFAULT — DAMAGES FOR DELAY — TIME EXTENSIONS (1976 OCT)

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. In addition, if title to property is vested in the Contractor under this contract it shall revest in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within ten (10) days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "*Disputes*".

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "*subcontractors or suppliers*" means subcontractors or suppliers at any tier.

(End of clause)

During a period of national emergency, paragraph (d) of the above clause may be changed by deleting the word "unforeseeable" and inserting the phrase "other than normal weather", after the word "causes" wherever it appears.

7-2101.8 *Termination for Convenience of the Government.*

(a) Insert the following clause in contracts exceeding $10,000 in value. In accordance with E-621, the last sentence of paragraph (j) of the clause may be deleted in contracts with agencies of the United States Government, foreign governments or agencies thereof, or State or local governments or agencies thereof.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1976 OCT)

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. Upon receipt by the Contractor of the Notice of Termination, if title to property is vested in the Contractor under this contract, it shall revest in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(i) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(ii) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(iv) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(vi) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(vii) use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (vi) above; *provided*, however, that the Contractor (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Section VIII, Armed Services Procurement Regulation, as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same; *provided*, that the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer, upon request of the Contractor made in writing within such one year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; *provided*, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree, as provided in paragraph (d), upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall pay to the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) with respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(A) the cost of such work;

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of Work under this contract, which amounts shall be included in the cost on account of which payment is made under (A) above; and

(C) a sum, as profit on (A) above, determined by the Contracting Officer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; *provided*, however, that if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(ii) the reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(ix); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (i) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(vii).

(f) Costs claimed, agreed to, or determined pursuant to (c), (d), (e), and (i) hereof shall be in accordance with Section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "*Disputes*", from any determination made by the Contracting Officer under paragraph (c), (e), or (i) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (c) or (i) hereof, and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c), (e) or (i) hereof, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (i) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (ii) any claim which the Government may have against the Contractor in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, the Contractor may file with the Contracting Officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause must be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the Contracting Officer.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three (3) years after final settlement under this contract—preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

(End of clause)

(b) Insert the following clause in contracts not exceeding $10,000.

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (1976 OCT)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of the Government. If this contract is so terminated, the rights, duties and obligations of the parties hereto shall be in accordance with the applicable Sections of the Armed Services Procurement Regulation in effect on the date of this contract. In addition, upon receipt by the Contractor of the Notice of Termination, if title to property is vested in the Contractor under this contract, it shall revest in the Government notwithstanding any other provision of this contract, except as to such property as the Contractor has disposed of by bona fide sale or property which has been removed from the site by the Contractor.

(End of clause)

7–2101.9 *Disputes*. Insert the appropriate clause in 7–602.6.

7–2101.10 *Assignment of Claims*. Insert the clause in 7–602.8.

7–2101.11 *Conditions Affecting the Work*. Insert the clause in 7–602.14.

7–2101.12 *Site Investigation*. Insert the clause in 7–602.33.

7–2101.13 *Protection of Existing Vegetation, Structures, Utilities, and Improvements*.

PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES, AND IMPROVEMENTS (1976 OCT)

(a) The Contractor will preserve and protect all existing vegetation such as trees, shrubs, and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the dismantling or demolition work. Care will be taken in removing trees authorized for removal to avoid damage to vegetation to remain in place. Any limbs or branches of trees broken during such operations or by the careless operation of equipment, or by workmen, shall be trimmed with a clean cut and painted with an approved tree pruning compound as directed by the Contracting Officer.

(b) The Contractor will protect from damage all existing improvements or utilities at or near the site of the work, including adjacent property of a third party, the location of which is made known to him, and will repair or restore any damage to such facilities resulting from failure to comply with the requirements of this contract or the failure to exercise reasonable care in the performance of the work. If the Contractor fails or refuses to repair any such damage promptly, the Contracting Officer may have the necessary work performed and charge the cost thereof to the Contractor.

(End of clause)

7-2101.14 *Permits and Responsibilities.*

PERMITS AND RESPONSIBILITIES (1976 OCT)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others.

(End of clause)

7-2101.15 *Other Contracts.* Insert the clause in 7-602.15.

7-2101.16 *Liability for Government Property.*

LIABILITY FOR GOVERNMENT PROPERTY (1976 OCT)

As to:

(i) items of property, title to which remains in the Government and which are to be delivered to the Government by the Contractor in the performance of the work; and

(ii) items of property, title to which is vested in the Contractor but which under the termination clauses of this contract is revested in the Government upon notice of termination;

the Contractor assumes the risk of and shall be responsible for any loss thereof or damage thereto except for reasonable wear and tear incident to removal and delivery to the Government.

(End of clause)

7-2101.17 *Workmanship.*

WORKMANSHIP (1976 OCT)

All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless or otherwise objectionable.

(End of clause)

7-2101.18 *Superintendence by Contractor.* Insert the clause in 7-602.12.

7-2101.19 *Inspection.*

INSPECTION (1976 OCT)

(a) All workmanship (if not otherwise designated by the specifications) shall be subject to inspection and examination by Government inspectors at any and all times during dismantling or demolition and at any and all places where such dismantling or demolition are carried on. The Contractor shall be responsible for any damage to property caused by unworkmanlike performance or by defective workmanship. Any unsatisfactory facilities, materials, and equipment, used by the Contractor, shall be replaced with satisfactory facilities, materials, and equipment, and the Contractor shall promptly segregate and remove such unsatisfactory items from the premises. If the Contractor fails to proceed at once in a workmanlike manner with the performance of the work or with the correction of defective workmanship, the Government may by contract or otherwise, replace such facilities, materials, and equipment or correct such workmanship and charge the cost thereof to the Contractor, and may terminate the right of the Contractor to proceed as provided in the "*Termination for Default — Damages for Delay — Time Extensions*" clause of this contract, the Contractor and surety being liable for any damage to the same extent as provided in said clause for terminations thereunder.

(b) The Contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection by Government inspectors. All inspection by the Government shall be performed in such manner as to not unnecessarily delay the work.

(End of clause)

7-2101.20 *Operations and Storage Areas.* Insert the clause in 7-602.35.

7-2101.21 *Cleaning Up.*

CLEANING UP (1976 OCT)

The Contractor shall at all times keep the dismantling or demolition area, including storage areas used by him, free from accumulations of waste material or rubbish and prior to completion of the work remove from the premises any rubbish and all tools, scaffolding, equipment, and materials not the property of the Government. Upon completion of the dismantling or demolition, the Contractor shall leave the premises in a clean, neat and workmanlike condition satisfactory to the Contracting Officer.

(End of clause)

7-2101.22 *Accident Prevention.* Insert the clause in 7-602.42(a). In contracts involving work of long duration or of hazardous character, add the paragraph (e) in 7-602.42(b).

7-2101.23 *Composition of Contractor.* Insert the clause in 7-602.32.

7-2101.24 *Renegotiation.* In accordance with 7-103.13, insert the appropriate clause therein.

7-2101.25 *Liquidated Damages.* Insert the clause in 7-603.39. The rate of liquidated damages will be determined in accordance with 18-113.

7-2101.26 *Pricing of Adjustments.* Insert the clause in 7-103.26.

7-2101.27 *Federal, State and Local Taxes.* Insert the clause in 7-103.10(a).

7-2101.28 *Equal Opportunity.* In accordance with 7-103.18(a), insert the clause therein.

7-2101.29 *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era.* Insert the clause in 7-103.27.

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7-2101.30 *Affirmative Action for Handicapped Workers.* In accordance with 12-1302(a), insert the clause in 7-103.28.

7-2101.31 *Covenant Against Contingent Fees.* Insert the clause in 7-103.20.

7-2101.32 *Officials Not to Benefit.* Insert the clause in 7-103.19.

7-2101.33 *Value Engineering Incentive.* Insert the clause in 7-602.50.

7-2102 Clauses to be Used When Applicable in Contracts for Dismantling, Demolition, or Removal of Improvements.

7-2102.1 *Service Contract Act of 1965.* In accordance with 4-502, and Section XII, Part 10, insert the appropriate clause in 7-1903.41(a) or (b).

7-2102.2 *Contract Work Hours and Safety Standards Act — Overtime Compensation.* In accordance with 12-301 and 12-302, insert the clause in 7-103.16(a).

7-2102.3 *Additional Bond or Other Security.* If the contract will require the contractor to furnish a performance bond or other security (see 4-503 and 7-2101.2), insert the following clause:

ADDITIONAL BOND OR OTHER SECURITY (1976 OCT)

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government

(End of clause)

7-2102.4 *Availability of Utility Services.* Insert the following clause in contracts for performance at Government installations when it is determined that one or more utility systems and supplies are adequate for the needs and use of both the Government and the contractor and it is advantageous to the Government to furnish such utility services.

AVAILABILITY AND USE OF UTILITY SERVICES (1976 OCT)

(a) The Government will make available to the Contractor, from existing outlets and supplies, all reasonably required amounts of utilities as specified in the Schedule or specifications Except as otherwise provided in the Schedule or specifications, each utility shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates as determined by the Contracting Officer

(b) The Contractor shall carefully conserve utilities furnished without charge. The Contractor, at his own expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines and, if necessary to determine charges, all meters required to measure the amount of each utility used; and he shall remove the same prior to final acceptance of the dismantling or demolition

(End of clause)

7-2102.5 *Misplaced Material*. If the contract involves work on or adjacent to a navigable stream, insert the clause in 7-603.32.

7-2102.6 *Signal Lights*. If the contract involves the use of marine equipment, insert the clause in 7-603.33.

7-2102.7 *Military Security*. In accordance with 7-104.12, insert the clause set forth therein in contracts involving classified facilities except in those contracts to be performed outside the United States, its possessions and Puerto Rico.

7-2102.8 *Identification of Employees*. In accordance with 7-603.34, insert the clause set forth therein where identification is required for security or other reasons.

7-2102.9 *Interest*. In accordance with E-620, insert the clause in 7-104.39.

7-2102.10 *Examination of Records by Comptroller General*. In accordance with 7-104.15, insert the clause therein in negotiated contracts in excess of $10,000.

7-2102.11 *Utilization of Small Business Concerns*. In accordance with 1-707.3(a), insert the clause in 7-104.14(a).

7-2102.12 *Small Business Subcontracting Program*. In contracts which may exceed $500,000 and which contain the clause in 7-104.14(a), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PROGRAM (1976 OCT)

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors, including suppliers, under this contract. In this connection, the Contractor shall designate an individual to (i) maintain liaison with the Government on small business matters, and (ii) administer the Contractor's Small Business Subcontracting Program.

(b) Notwithstanding the instructions on DD Form 1140-1, prior to completion of the contract and as soon as the final information is available, the Contractor shall submit a one-time completed DD Form 1140-1 to the Government addressees prescribed thereon. The DD Form 1140-1 shall show the prime contract number in lieu of identifying a quarterly report period. This subparagraph (b) is not applicable if the Contractor is a small business concern.

(c) The Contractor further agrees (i) to insert the "*Utilization of Small Business Concerns*" clause in subcontracts which offer substantial subcontracting opportunities, and (ii) to insert in each such subcontract exceeding $500,000 a clause conforming substantially to the language of this clause except that subcontractors shall submit DD Form 1140-1 direct to the Government addressees prescribed on the Form. The Contractor will notify the Contracting Officer of the name and address of each subcontractor that will be required to submit a report on DD Form 1140-1.

(End of clause)

7-2102.13 *Utilization of Minority Business Enterprises*. In accordance with 1-332.2, insert the clause in 7-104.36(a).

7-2102.14 *Minority Business Enterprises Subcontracting Program*. In accordance with 1-332.2, insert the clause in 7-104.36(b).

7-2102.15 *Payment of Interest on Contractors' Claims*. In accordance with 1-333, insert the clause in 7-104.82.

7-2102.16 *Gratuities*. In accordance with 7-104.16, insert the clause therein.

7-2102.17 *Convict Labor*. In accordance with Section XII, Part 2, insert the clause in 7-104.17.

7-2102.18 *Price Reduction for Defective Cost or Pricing Data*. In accordance with 7-104.29, insert the appropriate clause therein.

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7-2102.19 *Audit by Department of Defense*. In accordance with 7-104.41, insert the clause therein.

7-2102.20 *Subcontractor Cost or Pricing Data*. In accordance with 7-104.42, insert the appropriate clause therein.

7-2102.21 *Clean Air and Water*. In accordance with 1-2302.2, insert the clause in 7-103.29.

7-2102.22 *Privacy Act*. In accordance with 1-327.1, insert the clause in 7-104.96.

7-2102.23 *Reserved.*

Part 22—Reserved

This Part reserved pending approval of a test of the Short Form Research Contract (SFRC). (See Item XVI, DAC #76-27, dated 15 May 1981.

Part 23—Automatic Data Processing (ADP) Contracting

7-2300 Scope of Part. In accordance with 4-1104.5, this Part sets forth additional uniform contract clauses for use in connection with automatic data processing (ADP) contracting when procurement authority is delegated by GSA. (See Section IV, Part 11.)

7-2301 Reserved.

7-2302 Clauses to Use When Applicable.

7-2302.1 *Limitation of Liability.* The following clause shall be used in all solicitations and contracts for ADPE, software, ADP maintenance services, ADP supplies, and certain other contractual ADP support services unless the contracting officer determines that a higher degree of protection is in the best interest of the Government.

WARRANTY EXCLUSION AND LIMITATION OF DAMAGES (1981 MAY)

Except as expressly set forth in writing in this agreement, or except as provided in the clause entitled "Commitments, Warranties, and Representations," if applicable, and except for the implied warranty of merchantability, there are no warranties expressed or implied. In no event will the Contractor be liable to the Government for consequential damages as defined in the Uniform Commercial Code, Section 2-715, in effect in the District of Columbia as of January 1, 1973; i.e., consequential damages resulting from the seller's breach include:

(a) Any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) Injury to person or property proximately resulting from any breach of warranty.

(End of clause)

7-2302.2 *Contractor Representation.* The following clause shall be used in all solicitations and contracts for ADPE when the Government's requirement is set forth in the form of a data system specification and the value of the contract is expected to exceed $100,000.

CONTRACTOR REPRESENTATION (1981 MAY)

Unless the Contractor expressly states otherwise in his proposal, where functional requirements are expressly stated as part of the requirements of this solicitation, the Contractor, by responding, represents that in its opinion the system proposed is capable of meeting those requirements. However, once the functions have been demonstrated or put to use on the delivered system, Contractor responsibility under this clause ceases. In the event of any inconsistency between the detailed specifications and the functional specification contained in the solicitation, the former will control.

(End of clause)

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SECTION VIII

TERMINATION OF CONTRACTS

8-000 Scope and Applicability of Section.

(a) This Section establishes uniform policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It includes uniform contract clauses with respect to termination and excusable delay, and approved termination and settlement forms.

(b) This Section applies to contracts which by their terms provide for termination for the convenience of the Government or for the default of the contractor, whether or not the clauses in the contract with respect to termination and excusable delay are those set forth in Part 7 of this Section. In the event the clauses actually used in the contract are properly authorized termination clauses and are inconsistent with the provisions of this Section, the clauses actually used shall control to the extent of the inconsistency. Contracts which do not contain the applicable clauses may, where it is in the best interest of the Government, be amended by agreement prior to or after termination of the contract, to include or substitute such a clause. The provisions of this Section, unless inappropriate, shall be used to settle (i) subcontracts terminated as a result of modification of a prime contract, and (ii) shall be used as a guide by the contracting officer in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever such settlement is to be the basis of a claim for reimbursement from the Government by a contractor under a cost-reimbursement type contract.

(c) The provisions of this Section may be utilized in determining any equitable adjustment as a result of modification of any contract other than a cost-reimbursement type contract pursuant to the Changes clause.

TERMINATION OF CONTRACTS

Part 1—Definition of Terms

8–101 Definitions. As used in this Section, the following terms have the meaning stated below:

8–101.1 *Amount of Claim or Settlement.* When the action to be taken under this Section depends upon the amount of a termination claim or settlement, then, in determining such amount, (i) credits for retention or other disposal of termination inventory allocated to the claim and for advance or partial payments shall not be deducted from the gross claim or settlement; but (ii) amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors, shall be deducted.

8–101.2 *Common items* means material which is common in nature to both the terminated contract and the contractor's other work.

8–101.3 *Continued portion of the contract* means that portion of a partially terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor must continue to perform.

8–101.4 *Contractor-acquired property* is property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

8–101.5 *Contractor inventory* means (i) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and (ii) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

8–101.6 *Disbursing Officer* means the officer or agent of the office designated as the paying office under the contract.

8–101.7 *Effective date of termination* means the date upon which the notice of termination first requires the contractor to stop performance, in whole or in part, under the contract. If, however, the termination notice is received subsequent to the date fixed for termination, then the effective date of termination means the date on which the notice is received.

8–101.8 *Government-furnished property* is property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the contractor.

8–101.9 *Material* means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

8-101.10 *Other work* means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

8-101.11 *Partial termination* means the termination of a part, but not all, of the work which has not been completed and accepted under a contract.

8-101.12 *Plant clearance period* means a period beginning with the effective date of the termination for convenience and ending, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, 90 days after receipt by the termination contracting officer (TCO) of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the TCO and the contractor. Final phase of a plant clearance period means that part of a plant clearance period after the receipt of acceptable inventory scheduled covering all items of the particular property classification at the plant or location.

8-101.13 *Plant equipment* means personal property of a capital nature (consisting of equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items, but excluding special tooling and special test equipment) used or capable of use in the manufacture of supplies or in the performance of services or for any administrative or general plant purpose.

8-101.14 *Prime contract* means any contract as defined in 1-201.4 entered into by any Department or procuring activity.

8-101.15 *Industrial plant equipment* means that part of plant equipment with an acquisition cost of $1,000 or more which is listed in 13-312 and is reportable to the Defense Supply Agency for screening in accordance with 24-205.3.

8-101.16 *Salvage* means property which, because of its worn, damaged, deteriorated, or incomplete condition, or specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

8-101.17 *Scrap* means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

8-101.18 *Serviceable or usable property* means property that has reasonable prospect of sale or use either in its existing form or after minor repairs or alterations.

8-101.19 *Settlement agreement* means a written agreement in the form of an amendment to the contract, between the contractor and the Government settling all or a severable portion of a settlement proposal.

8-101.20 *Settlement proposal* means a termination claim submitted by a contractor or subcontractor in the form, and supported by the data, required by this Section.

8-101.21 *Special machinery and equipment* means that part of plant equipment which was acquired or constructed solely for the performance of the terminated contract or the terminated contract and other Government contracts, and as to which the contractor claims loss of useful value.

8-101.22 *Special tooling* shall have the meaning given in 13-101.5.

8-101.23 *Special test equipment* shall have the meaning given in 13-101.6.

TERMINATION OF CONTRACTS

8-101.24 *Subcontract* means any contract as defined in 1-201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

8-101.25 *Termination claim* means any claim by a contractor or subcontractor, permitted by the terms of a prime contract, for compensation for the termination, in whole or in part, of the prime contract or a subcontract thereunder, and any other claim which this Section authorizes to be asserted and settled in connection with a termination settlement.

8-101.26 *Termination inventory* means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, special test equipment, material, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined in 8-101.4 and 8-101.8.

8-101.27 *Terminated portion of the contract* means that portion of a terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor is not to continue to perform.

8-101.28 *Unadjusted contract changes* are any contract changes or contract provisions as to which a definitive modification is required but has not been executed.

TERMINATION OF CONTRACTS

Part 2—General Principles

8-200 Scope of Part. This Part deals with:

(i) the authority of contracting officers to terminate contracts in whole or in part (A) for the convenience of the Government; and (B) in the case of cost-reimbursement type contracts for default;
(ii) duties of the contractor and the contracting officer after issuance of the notice of termination;
(iii) general procedures for the settlement of terminated contracts; and
(iv) settlement agreements.

Part 3 sets forth additional principles applicable only to fixed-price type contracts. Part 4 sets forth additional principles applicable only to cost-reimbursement type contracts. Part 6 sets forth the principles applicable to the termination of fixed-price type contracts for default.

8-201 Authority of Contracting Officers.

(a) The authority of contracting officers to terminate contracts for convenience, and for default in the case of cost-reimbursement type contracts, and to enter into settlement agreements under this Regulation is usually found in the termination clause or other provisions of the contract.

(b) Contracts shall be terminated, whether for default or convenience, only when such action is in the best interest of the Government, as determined in accordance with this Regulation. When the PCO is aware that (i) the contractor will accept a no-cost settlement, (ii) Government property was not furnished, and (iii) there are no outstanding payments, claims, or other contractor obligations, the PCO shall effect a no-cost settlement agreement in lieu of issuing a notice of termination. Otherwise, a notice of termination should be issued; however, when the price of the undelivered balance of the contract is less than $1,000, a termination for convenience should normally not be effected but the contract be permitted to run to completion. If a notice of termination has been issued, negotiation of the settlement with the contractor, including a no-cost settlement if appropriate, shall be the responsibility of the termination contracting officer (see 8-206 and 8-210.4).

(c) Special consideration will be given to small business over large business concerns when terminating contracts for the convenience of the Government. When the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part, but not all, of the units still to be delivered, the decision as to which contract or contracts to terminate shall be made by the Chief of the Purchasing Office.

8-202 Prior Notification of Significant Contract Terminations.

(a) Prior Defense Department clearance of the information release is required before any notice or any information concerning a proposed contract termination involving a reduction in employment of 100 or more contractor employees is released to a contractor. Coordination of the timing of the notice to the contractor and release of information to Congress or the public is the responsibility of each Department through its liaison point designated in (d) below. In a labor surplus area a lesser number than 100 may be significant, and if so, such information release should be similarly cleared.

(b) The following information will be submitted to the appropriate Departmental liaison point:

(i) contract number, date, type of contract;
(ii) name of company;
(iii) nature of contract or end item;
(iv) the reasons for the termination;
(v) contract price of items terminated;
(vi) total number of contractor employees involved including the Government's estimate of the number who may be discharged;
(vii) statement of anticipated impact on the company and the community (identify); identify area labor category; whether contractor is large or small business, and include any known impact on hardcore disadvantage employment programs;
(viii) total number of subcontractors involved as well as the impact in this area, if known; and
(ix) draft (unclassified) of suggested press release of information.

(c) Clearance to release the information will be requested as soon as possible after the decision has been made to terminate a contract. Pending receipt of clearance to release, information pertinent to the termination will require "For Official Use Only" handling unless a security clearance is required.

(d) The Departmental liaison points for prior clearance to release information on significant terminations are as follows:

Army — OSA, OCLL (SACLL), ASA (I&L) (copy)
Navy — Chief of Legislative Affairs (OLA-N)
Air Force — Hq. USAF (AFLGP)
Defense Supply Agency — DSAH-PC
Defense Communications Agency — Contract Management Division (Code 260)
Defense Nuclear Agency — Chief, Office of Procurement, OATR
Defense Mapping Agency — DMA/LO

(e) Liaison offices of Departments will act promptly on the request for clearance to release information (not later than two working days after receipt) to avoid the accrual of termination costs.

(f) This reporting requirement is assigned Report Control Symbol: DD (I&L) (AR) 1412.

8-203 Notice of Termination.

(a) *General*. Contracts shall be terminated for convenience, or for default only by a written notice to the contractor (see 8-801 and 16-701). When such notice is mailed, it shall be sent by certified mail return receipt requested. The written notice shall state:

(i) that the contract is being terminated for the convenience of the Government (or for default) pursuant to the contract provisions authorizing such termination;
(ii) the effective date of termination;
(iii) the extent of termination and, if a partial termination, the portion of the contract to be continued;
(iv) recommended actions to be taken by the contractor to minimize the impact on his personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph 7 of the notice in 8-801.2); and
(v) any special instructions (e.g., see 15-205.42(f)).

(b) *Distribution of Copies.* Simultaneously with issuance of the termination notice to the contractor a copy shall be sent to the contract administration office and to any known assignee, guarantor, or surety of the contractor.

(c) *Amendment of Termination Notice.* A notice of termination may be amended to provide for:

(i) the correction of mistakes in the notice, of a nonsubstantive nature,

(ii) addition of supplemental data or instructions, and

(iii) rescission of the notice when it has been determined that the items of work terminated had been completed or shipped prior to the contractor's receipt of the notice.

(d) *Reinstatement of Terminated Contracts.* The purchasing office may reinstate the terminated portion of a contract in whole or in part by an amendment to the notice of termination provided that it has been determined in writing that:

(i) circumstances clearly indicate a requirement for the terminated items; and

(ii) reinstatement is advantageous to the Government; *provided that* the written consent of the contractor is obtained to the reinstatement.

8–204 Methods of Settlement. Settlement of terminated cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (i) negotiated agreement, (ii) determination by the TCO, (iii) in the case of cost-reimbursement type contracts, costing-out under vouchers using Standard Form 1034, or (iv) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

8–205 Duties of Prime Contractor After Receipt of Notice of Termination. The contractor, after receipt of the notice of termination and except as otherwise directed by the TCO, must comply with the termination clause of the contract and the notice of termination which generally require, among other things, that the contractor:

(i) stop work immediately on the terminated portion of the contract and discontinue placing subcontracts thereunder;

(ii) terminate all subcontracts related to the terminated portion of the prime contract;

(iii) immediately advise the TCO of any special circumstances precluding the stoppage of work;

(iv) if the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in the cost thereof;

(v) take such action as may be necessary, or as the TCO may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the TCO, deliver such property to the Government;

(vi) promptly notify the TCO in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;

(vii) settle all outstanding liabilities and all claims arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;

(viii) promptly submit his own settlement proposal (see 15-205.42), supported by appropriate schedules; and

(ix) dispose of any termination inventory, as directed or authorized by the TCO.

8-206 Duties of Termination Contracting Officer After Issuance of Notice of Termination.

(a) In accordance with the termination clause in the contract and with the notice of termination, the TCO shall, among other things:

(i) direct the action required of the prime contractor including the execution of a no-cost settlement agreement (see 8-210.4) if appropriate;

(ii) examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(iii) promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(iv) to the extent that he is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination.

(b) To expedite settlement, the TCO shall seek assistance from specially qualified personnel (such as negotiating, legal, accounting, inspecting, engineering, and property disposal personnel) to:

(i) assist the TCO in dealings with the contractor;

(ii) render advice on legal and contractual matters;

(iii) conduct accounting reviews and render advice and assistance on accounting matters; and

(iv) perform the following functions with respect to the termination inventory—

(A) verify its existence;

(B) determine qualitative and quantitative allocability;

(C) make recommendations concerning serviceability and unserviceability;

(D) undertake necessary screening and redistribution; and

(E) assist the contractor in accomplishing other disposition.

(c) An initial conference shall be held with the contractor as promptly as possible to develop a definite program for effecting the settlement. Where appropriate in the judgment of the TCO, principal subcontractors should be present. The TCO shall prepare and place in the termination case file, a memorandum on the results of the conference. Topics discussed at the conference should include:

(i) general principles relating to the settlement of any termination claim, including obligations of the contractor under the termination clause of the contract;

(ii) extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed;
(iii) status of any continuing work;
(iv) obligation of the contractor to terminate subcontracts and general principles to be followed in settlement of subcontractor claims;
(v) names of subcontractors involved and the respective dates termination notices were issued to them;
(vi) contractor personnel handling, and methods for, review and settlement of subcontractor claims;
(vii) arrangements for transfer of title and delivery to the Government of any materials required by the Government;
(viii) general principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractor's termination inventory, including the preparation of termination inventory schedules;
(ix) contractor accounting practices and preparation of DD Form 546 (Schedule of Accounting Information) (8-802.9);
(x) form in which settlement proposals shall be submitted;
(xi) accounting review of settlement proposals;
(xii) any requirement for interim financing in the nature of partial payments;
(xiii) tentative time schedule for negotiation of the settlement, including submission of settlement proposals, termination inventory schedules, and accounting information schedules by the contractor and subcontractors; and
(xiv) actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph 7 of the letter notice in 8-801.2).
(xv) obligation of the contractor to furnish accurate, complete and current cost or pricing data and to certify to that effect in accordance with 3-807.6(f) prior to execution of the termination settlement agreement in excess of $100,000.

8-206.1 *Termination Status Report.* Upon receipt of the termination notice, it is the responsibility of the contract administration office to prepare DD Form 1598, Contract Termination Status Report, and transmit two copies to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible. In addition, these reports shall be furnished on a quarterly basis for the quarters ending March, June, September, and December, within 30 days after the end of the respective quarter, and upon closing of the termination case. This reporting requirement is assigned Report Control Symbol: DD (I&L) (Q&AR) 1411.

8-206.2 *Release of Excess Funds.* An estimate of funds required to settle the termination claim will be made by the TCO at the earliest practicable date. Except in cases where (i) the contract price of items terminated is $1,000 or less, or (ii) the estimated amount of excess funds available is $1,000 or less, funds obligated under the contract in excess of an estimated amount required for settlement will be released to the purchasing office within 30 days after receipt of the termination notice by the TCO. Amounts of less than $1,000 shall be released upon request from the purchasing office. Continuous surveillance of required funds will be maintained by the TCO to permit timely release of any additional excess funds. In all cases, funds will be released within 10 days after the amount required for settlement has been determined by the TCO. A recommended format for release of excess funds is in 8-807. If it appears that the previous releases of excess funds have resulted in a shortage of the amount which will be required for settlement, the TCO will inform the purchasing office and request by letter the reinstatement of funds, which will be provided within 30 days thereafter.

8-206.3 *Termination Case File.* A separate termination case file shall be established and maintained for each individual termination by the TCO responsible for negotiating final settlement. Such file shall include records of all actions relative to the settlement. (See 1-308.)

8-207 Fraud or Other Criminal Conduct. Whenever the TCO has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts in accordance with 1-111.

8-208 Audit of Prime Contract Settlement Proposals and of Subcontract Settlements.

(a) Each settlement proposal of $10,000 or over submitted by a prime contractor shall be referred by the TCO to the Defense Contract Audit Agency for appropriate examination and recommendation. The TCO may, when circumstances indicate the necessity therefor, refer settlement proposals of less than $10,000 to such agency. The TCO's referral shall be in writing, indicate any specific information or data which the TCO desires to have developed, and include any facts or circumstances within the knowledge of the TCO which will assist the Defense Contract Audit Agency in the accomplishment of its function. The auditor shall develop such information and may make such further accounting review as he deems appropriate. The Defense Contract Audit Agency shall submit written comments and recommendations to the TCO. In claims of less than $10,000 where a formal examination of the settlement proposal is not warranted, a desk review will be performed by the TCO or a qualified member of his staff. A written summary of the review will be incorporated in the termination case file.

(b) Subcontract settlements submitted by a contractor to the TCO for approval or ratification in accordance with 8-209 shall be referred to the Defense Contract Audit Agency for review and recommendations if (i) the settlement involves $25,000 or more unless an accounting review of the settlement proposal has been performed by the Defense Contract Audit Agency; or (ii) the TCO considers an accounting review in whole or in part, desirable. The requirement for review under (i) or (ii) does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review. The Defense Contract Audit Agency shall submit written comments and recommendations to the TCO.

(c) The responsibility of the contractor set forth in 8-209.1 for settlement of immediate subcontractors' settlement proposals applies equally to prime contractors and subcontractors and includes responsibility for performing accounting reviews and any necessary field audits. However, in the situations outlined below, the Defense Contract Audit Agency generally should be requested to perform the accounting review of a subcontractor's settlement proposal where:

(i) a subcontractor objects to an accounting review of his records by an upper-tier contractor for competitive reasons;

(ii) the Defense Contract Audit Agency is currently performing audit work at the subcontractor's plant, or where it can be performed more economically or efficiently;

(iii) audit by the Defense Contract Audit Agency is necessary for consistent audit treatment and orderly administration; or

(iv) the contractor has a substantial or controlling financial interest in the subcontractor.

Duplication by the Defense Contract Audit Agency of accounting reviews performed by the upper tier contractor on subcontractor settlement proposals will be avoided to the extent possible. However, when appropriate, the Government will make additional reviews. Where the contractor is performing accounting reviews in accordance with this paragraph, the TCO should request the Defense Contract Audit Agency periodically to examine the contractor's accounting review procedures (including but not limited to audit programs, cost principles applied, working papers, and audit reports) and performance thereunder and make such comments and recommendations to the contracting officer as may be deemed appropriate.

(d) The audit report is an advisory document rendered to the TCO for his use in negotiating a settlement or issuing a unilateral determination. Due care and prudence will be exercised by Government personnel in the handling of audit reports covering a contractor's or subcontractor's settlement proposals so as not to reveal privileged information or information that will jeopardize the negotiation position of the Government, prime contractor, or a higher tier subcontractor. Consistent with the foregoing and when considered in the Government's interest, accounting reviews under (c) above may be made available to prime and higher tier subcontractors for their use in settling subcontract claims.

8-209 Settlement of Subcontract Claims.

8-209.1 *Subcontractor's Rights.* A subcontractor has no contractual rights against the Government upon the termination of a prime contract. The rights of a subcontractor are against the prime contractor or intermediate subcontractor with whom he has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the termination claims of immediate subcontractors.

8-209.2 *Prime Contractor's Rights and Obligations.* Each termination clause provides that, after receipt of a notice of termination and except as otherwise directed by the TCO, the prime contractor shall terminate all subcontracts to the extent that they relate to the performance of any work terminated by notice of termination. Prime contractors should therefore, for their own protection, include a termination clause in their subcontracts. A suggested subcontract termination clause is set forth in 8-706. The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise his rights thereunder, shall not (i) affect the right of the Government to require the termination of the subcontract, or (ii) increase the obligation of the Government beyond that which would have arisen if the subcontract had contained an appropriate termination clause. In any such case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount which would be due under subparagraphs (i), (ii), and (iii) of paragraph (e) of the suggested subcontract termination clause. Reimbursement in excess of that amount shall be allowed only in unusual cases and then only when the TCO is satisfied that the terms of the subcontract were negotiated in good faith and did not unreasonably increase the rights of the subcontractor.

8-209.3 *Settlement Procedure.*

(a) Settlements with subcontractors shall be made in general conformity with the policies and principles relating to settlement of prime contracts as set forth in this Part 2 and Part 3 or 4 of this Section as applicable. However, the basis and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each such settlement shall be supported by accounting and other data sufficient for adequate review by the Government. In no event shall the Government pay to the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see 8-209.5).

(b) Except as provided in 8-209.4, (i) all subcontractor termination inventory shall be disposed of and accounted for in accordance with Section XXIV; and (ii) the TCO shall require the prime contractor to submit to him for approval or ratification all termination settlements with subcontractors. In submitting each settlement, the prime contractor shall certify that he has examined the subcontractor's claims included therein, that they are allocable to the terminated portion of the prime contract, and that the settlement is fair and reasonable, was negotiated in good faith, and is not more favorable to the subcontractor than if the Government were not involved. The contractor shall also certify that he has received from all his immediate subcontractors certifications substantially in the form of his own certification. With respect to settlements with more remote subcontractors, the contractor shall certify that he has no information leading him to doubt their reasonableness or their allocability to the terminated portion of the prime contract.

(c) The TCO shall promptly examine such subcontract settlement required to be submitted to him (including the basis and form of the proposal upon which the settlement was based) to satisfy himself that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see 8-000(c)), and that the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the TCO shall be guided generally by the provisions of this Section relating to the settlement of prime contracts, and shall comply with any applicable requirements of 8-208 relating to accounting and other reviews. Upon completion of the examination, the TCO shall notify the contractor in writing of (i) his approval or ratification, or (ii) his reasons for disapproval.

8–209.4 ***Authorization for Subcontract Settlements Without Approval or Ratification.***

(a)(1) The TCO may, upon the written request of the prime contractor, authorize him in writing to conclude settlements of $10,000 or less (see 8–101.1) of his terminated subcontracts, without approval or ratification by the TCO, if:

(i) the TCO is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inventory) of his immediate and lower tier subcontractors. (The TCO shall obtain the advice and recommendations of (A) the Defense Contract Audit Agency with respect to the adequacy of the contractor's audit administration, including personnel; and (B) the cognizant disposal office with respect to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters.);

(ii) any termination inventory included in determining the amount of the settlement will be disposed of in accordance with 24–212, except that the disposition of such inventory shall not (A) be subject to review by the TCO under 8–209.3(c) or 24–212.3, or (B) be subject to 24–205; *provided*, however, no industrial plant equipment included in such inventory shall be disposed of prior to screening pursuant to 24–205.3; and

(iii) the settlement will be accompanied by a certificate substantially similar to the certificate set forth in the settlement proposal form in 8–802.

Except as provided in (3) below, authority granted to a prime contractor pursuant to this subparagraph (a)(1) by any contracting officer within the Department of Defense shall be applicable to all prime contracts of all procuring activities within the Department of Defense which have been (i) terminated or (ii) modified by change orders.

(2) Except as provided in (3) below, the TCO without further approval or ratification shall accept, as part of the prime contractor's termination claim, any settlement of terminated lower tier subcontracts concluded by any of his immediate or lower tier subcontractors who, pursuant to (1) above, have been granted, by any contracting officer within the Department of Defense, authority as prime contractors to settle subcontracts; *provided* that the settlement of such lower tier subcontracts is within the limit of such authority. Authorization to settle claims of lower tier subcontractors shall not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise such authority in his capacity as a subcontractor, with respect to his terminated subcontracts and orders. When exercising such authority as a subcontractor, notification thereof shall be furnished the purchaser.

(3) The provisions of (1) and (2) above shall not apply to any contracts under the administration of any contracting officer within the Department of Defense if such contracting officer so notifies the prime contractor concerned. Such notice shall (i) be in writing, and (ii) if (2) above is involved, specify any subcontractor affected.

(b) Paragraph 24–212 shall apply to any disposal of completed end items allocable to the terminated subcontract, except that completed end items allocable to the terminated subcontract may be disposed of without review by the TCO under 8-209.3 or 24-212.3, and without screening under 24-205, if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this paragraph 8-209.4.

(c) A TCO granting the above authorization to a contractor shall be responsible for periodically (at least annually) making a selective review of settlements and settlement procedures to determine whether the contractor is making adequate reviews and fair settlements, and whether such authorization shall remain in effect. In connection with these periodic reviews, the TCO shall obtain the advice and recommendations of the Defense Contract Audit Agency with respect to the auditing aspects of the contractor's review procedures and those of the disposal office with respect to property disposal aspects of the contractor's review procedures. Whenever the TCO determines that the contractor's procedures are not adequate or that improper settlements are being made, he shall revoke the authorization by written notice to the contractor. The revocation shall take effect only from the date of receipt.

(d) Any number of separate settlements may be made with a single subcontractor. However, claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible, and shall not be divided in order to bring them within an authorization.

(e) Upon written request of the contractor and with the prior written concurrence of the Chief of the Contract Administration Office, an authorization granted under (a)(1) above, may be increased to authorize the contractor to conclude settlements of more than $10,000 but not more than $25,000 under a particular prime contract. Such authorization in excess of $10,000 may be limited to specific subcontracts or classes of subcontracts. However, industrial plant equipment, the cost of which is included in determining the amount of the claim, shall not be disposed of prior to screening pursuant to 24-205.3.

(f) Authorizations granted under this paragraph shall not authorize the settlement of requisitions or orders placed with any division or unit within the contractor's corporate entity.

(g) A recommended format of the Contractor's Application for the Grant of an Authorization is in 8-810 and the TCO's Letter of Authorization to the contractor is contained in 8-810.1.

8-209.5 *Recognition of Judgments and Arbitration Awards.*

(a) In the event a subcontractor obtains a final judgment against a prime contractor, the TCO shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the subcontractor, to the extent such judgment is properly allocable to the terminated portion of the prime contract if:

(i) the prime contractor has made reasonable efforts to include in his subcontract the termination clause in 8-706 or a similar clause excluding payment of anticipatory profits or consequential damages;

(ii) the provisions of the subcontract relating to the rights of the parties upon its termination, in whole or in part, are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

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(iii) the contractor has made reasonable efforts to settle the claim of the subcontractor;

(iv) the contractor has given prompt notice to the TCO of the initiation of the proceedings in which the judgment was rendered and has not refused to give the Government control of the defense of the proceedings; and

(v) the contractor has diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, has rendered such reasonable assistance as has been requested by the Government.

If the foregoing conditions are not all met, the TCO may allow the contractor such part of the judgment as he considers a fair amount for settling the termination claim under the subcontract, giving due regard to the policies set forth in this Section VIII for settlement of such claims.

(b) Where a contractor and his subcontractor submit a subcontractor termination claim to arbitration under any applicable law or contract provision, the TCO shall recognize the amount of the arbitration award as the cost of settling the claim of the subcontractor to the same extent and under the same conditions as specified in (a) above.

8–209.6 *Delay in Settlement of Subcontractor Claims.* Where a prime contractor is unable to settle with a subcontractor and such inability is delaying the settlement of the prime contract, the TCO may settle with the prime contractor, excepting from the settlement the whole or any part of the claim of such subcontractor and reserving the rights of the Government and of the prime contractor with respect thereto.

8–209.7 *Government Assistance in Settlement of Subcontracts.* In unusual cases the TCO may determine that it is in the best interest of the Government to offer assistance to the prime contractor in the settlement of a particular subcontract. Such a situation may exist when the prime contractor has made all reasonable efforts to negotiate the settlement without success and the TCO believes that with the assistance of the Government a settlement can be reached. Such assistance shall be furnished only with the consent of the prime contractor. In such cases, an agreement may be entered into by the Government, the prime contractor, and a subcontractor, covering the settlement of one or more subcontracts. In any such case, payment to the subcontractor shall be effected through the prime contractor as part of the overall settlement with the latter.

8–209.8 *Assignment of Rights Under Subcontracts.*

(a) The termination clauses set forth in Part 7 of this Section obligate the prime contractor to assign to the Government, in the manner, at the time, and to the extent directed by the TCO, all his right, title, and interest under any subcontracts terminated by reason of termination of the prime contract. The TCO shall not require such assignment unless he determines that it is in the best interest of the Government.

(b) In giving the Government the right to require the assignment of the prime contractor's interest in terminated subcontracts, the termination clauses set forth in Part 7 of this Section also provide that the Government shall have the right, in its discretion, to settle and pay any or all claims arising out of the termination of such subcontracts. This right does not obligate the Government to settle and pay termination claims of subcontractors. As a general rule, the prime contractor is obligated to settle and pay such claims. When, however, the TCO determines that it is in the best interest of the Government, he shall, after notifying the contractor, proceed to settle the subcontractor's termination claim in accordance with termination procedures applicable to the settlement of prime contracts. An example of a situation in which the best interest of the Government would be served by effecting a direct settlement would be where a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's claim will jeopardize the financial position of the subcontractor.

8–210 Settlement Agreements.

8–210.1 *General.* When a settlement has been negotiated with respect to the terminated portion of a contract, and all required reviews have been obtained, the contractor and the TCO shall enter into a settlement agreement on Standard Form 30 (Amendment of Solicitation/Modification of Contract), substantially in the form set forth in the appropriate subparagraph of 8–805. The settlement shall cover (i) any setoffs and counterclaims which the Government may have against the contractor and which may be applied against the terminated contract, and (ii) all claims of subcontractors, except claims which are specifically excepted from the agreement and reserved for separate settlement.

8–210.2 *Reserved Items.* Where any rights or claims of the Government or of the contractor other than standard reservations contained in settlement forms 8–805.1 through 8–805.8 are to be reserved from the settlement agreement, the agreement shall clearly and specifically describe the nature and extent of the reserved items. However, care shall be taken so that the wording of the reservation does not create any new rights in the parties beyond those in existence prior to the execution of the settlement agreement. The settlement agreement shall be clearly marked "This settlement agreement contains a reservation" and the contract file shall be retained until such reservation is removed. The TCO will assure that sufficient funds are reserved to cover complete settlement of the reserved items. The amount to be reserved will be determined by the TCO based on the best evidence available to him at the time of settlement. The separate settlement of reserved items shall be in accordance with the provisions of this Section and shall be set forth in settlement agreements. A recommended format for Settlement of Reservations appears in 8–805.9.

8–210.3 *Government Property.* Before any settlement agreement is executed, the TCO shall determine the status of the Government property account for the terminated contract. If the audit of such property required by B–104 or C–104 discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property, or make an appropriate deduction from the amount otherwise due the contractor.

8–210.4 *No-Cost Settlement.*

If no costs have been incurred by the contractor with respect to the terminated portion of the contract or if the contractor is willing to waive the costs incurred by him and if no amounts are due to the Government under the contract, a no-cost settlement agreement shall be executed substantially in the form set forth in 8–805.6 or 8–805.7, as applicable.

8–210.5 *Partial Settlements*. Every effort should be made by the TCO to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, TCO's shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a TCO cannot promptly effect a complete settlement under the terminated contract, a partial settlement may be entered into; *provided* (i) the issues on which agreement has been reached are clearly severable from other issues, and (ii) the partial settlement will not prejudice the interest of the Government or the contractor in disposing of the unsettled part of the claim.

8–210.6 *Joint Settlement of Two or More Claims*. With the consent of the contractor, the contracting officer or officers concerned may negotiate jointly two or more termination claims of the same contractor under different contracts, even though such contracts are with different Departments. In such cases, accounting work shall be consolidated to the greatest extent practical. The settlement resulting from such joint negotiation may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved. Where the settlement agreement covers more than one contract, it shall (i) clearly identify the contracts involved; (ii) assign a supplementary Procurement Instrument Identification number to each contract in accordance with 20–204.3; (iii) apportion the total amount of the settlement among the several contracts on some reasonable basis; (iv) have attached or incorporated therein a schedule showing the apportionment; and (v) be distributed and attached to each contract involved in the same manner as other contract modifications.

8–210.7 *Settlement by Determination*.

(a) *General*. To the extent that the contractor and TCO are unable to agree upon the settlement of a terminated contract or if a termination claim is not submitted within the period required by the termination clause in the contract, the TCO shall issue a determination of the amount due in accordance with the termination clause in the contract, including any cost principles incorporated therein by reference. An adjustment for loss, if any, should be made in accordance with 8–304. The TCO shall comply with provisions of 8–210.1 through 8–210.6 in making any such determination. Copies of determinations shall be accorded the same distribution as modifications to a contract.

(b) *Notice to the Contractor*. The TCO shall give the contractor not less than 15 days' notice by certified mail (return receipt requested) to submit, on or before a stated date, written evidence substantiating the amount claimed to be due.

(c) *Submission of Evidence*.

(1) The contractor has the burden of establishing by proof satisfactory to the TCO the amount claimed.

(2) The contractor may submit such vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as he may wish. The TCO may request the contractor to submit such additional documents and data, and may cause such accounting, investigations, and audits to be made, as he deems appropriate.

(3) The TCO may accept photostatic or other copies of documents and records, and shall not require original documents, unless there is a question of authenticity.

(4) If the contractor wishes to confer with the TCO, or if the TCO wishes additional information from Government personnel or from independent experts, or wishes to consult persons whose affidavits or reports have been submitted, the TCO, in his discretion, may hold such conferences as he deems appropriate.

(d) *Determinations*. After reviewing the information submitted or otherwise available to him, the TCO shall determine the amount due and shall transmit a copy of his determination to the contractor by certified mail (return receipt requested). The letter of transmittal shall advise the contractor that the determination is a final decision from which an appeal may be taken under the disputes clause. The determination shall set forth the amount due the contractor and shall be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in 8–802 and set forth in F–200.540, F–200.541, and F–200.831 and by additional information, schedules, and analyses, as appropriate. An adequate explanation shall be given for each major item of disallowance. The TCO need not reconsider (i) any settlement with a subcontractor, (ii) any disposition of property, or (iii) any other action relating to the terminated portion of the contract, where such settlement, disposition, or other action has been previously ratified or approved by him or another duly authorized contracting officer.

(e) *Preservation of Evidence*. The TCO shall retain in appropriate files all written evidence and other data or copies thereof, relied upon by him in making his determination, except that copies of original books of account, need not be made. Books of account together with other original papers and documents, shall be returned to the contractor within a reasonable time.

(f) *Appeals*. The contractor has a right of appeal, under the Disputes clause of the contract, from any settlement by determination, except that the contractor has no such right of appeal where he has failed to submit his settlement proposal within the time provided in the contract and has failed to request extension of such time. The pendency of an appeal shall not affect the authority of the TCO to settle the termination claim or any part thereof by a negotiated agreement with the contractor at any time before the appeal is decided.

(g) *Decision of the Armed Services Board of Contract Appeals*. A decision of the Armed Services Board of Contract Appeals will be given effect, when necessary, by a supplement to the contract. Where appropriate, a release should be obtained from the contractor. TCOs are authorized to modify forms of Settlement Agreement in 8–805 to accord with this provision.

8–211 Contracting Officer's Negotiation Memorandum. The TCO shall, at the conclusion of the settlement negotiations, prepare a memorandum setting forth the principal elements of the settlement for inclusion in the termination case file and for the use of reviewing authorities. If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors considered with respect to each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually, but the total amount of the recommended settlement shall be supported in reasonable detail. The memorandum shall include explanations of matters as to which differences and doubtful questions were settled by agreement, and the factors taken into consideration in connection therewith, and any other matters which, in the opinion of the TCO, will assist reviewing authorities in understanding the basis for the settlement. Recommended memorandum formats for settlements requiring review board action appear in 8-808 and 8-809.

8-212 Reserved.

8-213 Payment.

8-213.1 *Partial Payments Upon Termination.*

(a) *General.* If the contract authorized partial payments on termination claims prior to settlement, a fixed-price prime contractor, or a cost-reimbursement prime contractor whose settlement proposal includes costs, may request such partial payments in the form set forth in 8-802.10 at any time after submission of interim or final settlement proposals. Applications for partial payments shall be processed promptly. A subcontractor's partial payment application shall be submitted through the prime contractor and the prime contractor shall attach his own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor shall be made only through the prime contractor.

(b) *Amount of Partial Payment.* Before approving any partial payment requested by the contractor, the TCO shall have made such accounting, engineering, or other specialized reviews as he deems proper of the data required by this Section to be submitted in support of the contractor's settlement proposals. If such reviews and the TCO's examination of the data indicate that the requested partial payment is proper, the TCO may, in his discretion, authorize payments as follows:

(i) an amount up to 100 percent of the contract price, adjusted in accordance with 8-306 for undelivered acceptable items completed prior to the termination date, or completed thereafter with the approval of the TCO, which are included in the contractor's settlement proposals pursuant to 8-306;

(ii) an amount up to 100 percent of the amount of any subcontract settlement effected and paid by the prime contractor; *provided* the settlement has been approved or ratified by the TCO pursuant to 8-209.3(c) or has been authorized pursuant to 8-209.4;

(iii) an amount up to 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(iv) a reasonable amount, not to exceed 90 percent, of other allowable costs (including manufacturing and administrative overhead) allocable to the terminated portion of the contract and not included in (i), (ii), or (iii) above; and

(v) an amount up to 100 percent of partial payments made to subcontractors in conformance with this subparagraph (b).

No partial payments shall be made on account of profit or fee which may be claimed with respect to the terminated portion of the contract. In exercising his discretion as to the extent to which partial payments shall be made, the TCO shall consider the diligence of the contractor in settling with his subcontractors and in preparing his own claim.

(c) *Recognition of Assignments.* When an assignment of claims has been made under the contract, partial payments shall not be made to other than the assignee unless the parties to the assignment consent to the payments. Where moneys payable under the contract have been assigned, applications of subcontractors for partial payment shall not be approved for payment unless a written statement has been secured by the contractor from the assignee, agreeing to and authorizing the payment of funds in the manner prescribed by Section V of the Application (DD Form 548).

(d) *Security for Partial Payments.* To the extent that any partial payment is made with respect to completed end items or for direct or indirect costs of termination inventory, the interest of the Government shall be protected by transfer of title to the Government of the completed end items or termination inventory concerned, or by the creation of a lien in favor of the Government, paramount to all other liens, on such completed end items or termination inventory, or by other appropriate means.

(e) *Deductions in Computing Amount of Partial Payments.* There shall be deducted from the gross amount of any partial payment otherwise payable under 8-213.1(b):

(i) all unliquidated balances of progress payments and advance payments (including interest thereon) theretofore made to the contractor, which are allocable to the terminated portion of the contract; and

(ii) the amounts of all credits arising from the purchase, retention, or sale of property the costs of which are included in the application for partial payment.

(f) *Limitation on Total Amount: Effect of Overpayment.* The total amount of all partial payments shall not exceed the amount which will, in the opinion of the TCO, become due to the contractor by reason of the termination. If the total of partial payments made to the contractor should exceed the amount finally determined to be due to the contractor on his termination claim, the excess shall be repayable to the Government on demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, from the date such excess payment was received by the contractor to the date of repayment; *provided*, that (i) no interest shall be charged for any such excess payment attributable to a reduction in the contract termination claim by reason of retention of other disposition of termination inventory, until 10 days after the date of such retention or disposition, or such later date as determined by the TCO by reason of the circumstances, and (ii) no interest shall be charged for overpayment under cost-reimbursement type research and development contracts (without profit or fee to the contractor) if the overpayments are repaid to the Government within 30 days after demand.

(g) *Certification and Approval of Partial Payments.* Partial payments in a specific amount shall be made on the basis of vouchers or invoices certified by the contractor as follows:

> The payment covered by this voucher is a partial payment on account of the Contractor's termination claim under contract No. ...., made pursuant to Section VIII of the Armed Services Procurement Regulation.

The invoice or voucher, if proper, shall be approved by the TCO by noting thereon the following:

> Payment in the amount of $..................approved.

8–213.2 *Final Payment.*

(a) *Negotiated Settlement.* Upon execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by Determination.* In the event of a settlement by determination:

- (i) if the contractor has not appealed the determination a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment; or
- (ii) if the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and presented to the disbursing officer for payment. Pending determination of any appeal, an invoice or voucher pursuant to (i) above may be presented to the disbursing officer for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination. Interest may, however, be allowed on successful contractor appeals to the contracting officer's determination in accordance with the Payment of Interest on Contractors' Claims clause in 7–104.82.

8–214 Cost Principles. The cost principles and procedures set forth in the applicable Part of Section XV shall, subject to the general policies set forth in 8–301, (i) be used in claiming, negotiating, or determining costs relevant to termination settlements under fixed price and cost reimbursement type contracts with other than educational institutions; and (ii) be a guide for the negotiation of settlements under fixed price or cost reimbursement type contracts for experimental, developmental or research work with educational institutions (but see 15–103(iii)).

8–215 Settlement of Unadjusted Contract Changes.

(a) Prior to settlement of a completely terminated contract, the TCO shall obtain from the purchasing office a list of all unadjusted contract changes pertaining thereto. The TCO shall settle, as part of final settlement, all unadjusted contract changes after obtaining the recommendations of the purchasing office concerning such changes.

(b) When the contract has been partially terminated, any outstanding unadjusted contract changes will be handled by the purchasing office. However, delegation may be made by the PCO to the TCO.

8-216 Terminated Contracts With Canadian Commercial Corporation.

(a) The termination and settlement of contracts with the Canadian Commercial Corporation shall be effected in accordance with the provisions of (i) the Letter of Agreement between the Department of Defence Production (Canada) and the United States Department of Defense (6-1401(a)); (ii) policies in Section VI, Part 5, and Section VIII; and (iii) the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada).

(b) The termination claim of Canadian Commercial Corporation shall be submitted in the form prescribed in 8-802, and shall reflect the amount of settlements with subcontractors. The letter transmitting the claim shall certify that (i) subcontract settlements with Canadian subcontractors have been approved by the Contracts Settlement Committee of the Department of Defence Production (Canada), if required pursuant to the Manual of Procedure on Termination of Contracts, Department of Defence Production (Canada), and (ii) that disposition of inventory has been completed. The TCO shall prepare an appropriate settlement agreement pursuant to the provisions of 8-210 and 8-805.

(c) All Canadian subcontracts shall be settled by the Canadian Commercial Corporation pursuant to 6-504.3. Schedules listing serviceable or usable contractor inventory shall be submitted by the Canadian Commercial Corporation to the TCO for screening in accordance with the provisions of 24-205. Transfer instructions resulting from screening procedures shall be submitted to the Canadian Commercial Corporation for action. At the expiration of the screening period, the TCO shall advise the Canadian Commercial Corporation to proceed with disposition of contractor inventory determined to be surplus to the requirements of the Government. The settlement of Canadian subcontracts shall not be subject to approval or ratification by the TCO, except that in cases that result in a proposed negotiated settlement in excess of the total contract price of the prime contract, ratification of the proposed settlement by the United States PCO, evidenced by a contract modification increasing the contract price and obligating required additional funds shall be obtained by the TCO prior to final settlement.

(d) Termination claims submitted by United States subcontractors and suppliers normally should be referred by the Canadian Commercial Corporation to the TCO (normally DACSR, Cleveland) for settlement in accordance with this Section and Section XXIV. Upon completion of all settlement action, the TCO shall advise the Canadian Commercial Corporation of the amount of the net settlement agreed upon, which shall be included in the termination claim submitted pursuant to (b) above. Execution of a settlement agreement with the subcontractor shall be the responsibility of the Canadian Commercial Corporation.

8-217 Settlement of Terminated Contracts With Incentive Provisions.

(a) *FPI Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of paragraph (i) of the clause in 7-108.1

(1) *Partial Termination.* Under a partial termination of a FPI contract, the TCO shall negotiate a settlement pursuant to the termination for convenience clause, as provided in paragraph (i) of the clause in 7-108.1 and paragraph (k) of the clause in 7-108.2. The application of the incentive price revision provisions to completed items accepted by the Government, including any for which reimbur-

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sement may be claimed in the settlement proposal, shall be accomplished by the procuring contracting officer (PCO). Reimbursement for completed articles included in the settlement proposal for which a final price has not been established shall be at target price. An appropriate reservation as to final price with respect to such completed articles shall be incorporated in the supplemental agreement.

(2) *Complete Termination.* If any items were delivered and accepted by the Government, prices shall be established by the PCO under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see 8–701) shall govern and the provisions of the incentive clause shall not be applicable. The TCO responsible for the termination settlement will assure himself, on the basis of evidence he deems proper (including coordination with the PCO), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) *CPIF Contracts.* The settlement of terminated contracts containing an incentive clause shall be in accordance with the provisions of 8–702.

(1) *Partial Termination.* Under a partial termination of a CPIF contract, settlement by the TCO shall be limited to an adjustment of target fee as provided in paragraph (o) of the clause in 7–203.4(b). The supplemental agreement shall include a reservation with respect to any adjustment of target cost resulting from the partial termination. Adjustment of target cost, if required, shall be accomplished by the PCO.

(2) *Complete Termination.* The settlement will be negotiated in accordance with the provisions of Section VIII, Part 4, and 8–702. The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

Part 3—Additional Principles Applicable to Fixed-Price Contracts

8-301 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including an allowance for profit thereon which is reasonable under the circumstances. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The application of standards of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled, by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of record keeping, reporting and accounting, in connection with the settlement of termination claims shall be kept to the minimum compatible with the reasonable protection of the public interest.

8-302 Reserved.

8-303 Allowance for Profit.

(a) *General.* Profit shall be allowed on preparations made and work done by the contractor for the terminated portion of the contract. Although the contractor's settlement efforts will be considered, profit will not be based on the dollar amount of the contractor's settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see 8-209.5). Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

(b) *Factors To Be Considered.* In negotiating or determining profit, factors to be considered include:

(i) extent and difficulty of the work done by the contractor as compared with the total work required by the contract; engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered;

(ii) engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(iii) efficiency of the contractor, with particular regard to—

(A) attainment of quantity and quality production,

(B) reduction of costs,

(C) economy in the use of materials, facilities, and manpower, and

(D) disposition of termination inventory;

(iv) amount and source of capital employed and extent of risk assumed;

(v) inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(vi) character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(vii) the rate of profit which the contractor would have earned had the contract been completed;

(viii) character and difficulty of subcontracting including selection, placement, and management of subcontracts; engineering, technical assistance, and other services rendered; and effort in negotiating settlement of terminated subcontracts. The profit allowed for the contractor's efforts shall not be measured by the amount of the contractor's payment to subcontractors for settlement of their termination claims. The termination of a contract removes risks and responsibilities with respect to material or services which have not been delivered or furnished by the subcontractor. Therefore, no allowance to the prime contractor for profit may be made for such material or services which, as of the effective date of termination, have not been delivered by the subcontractor, regardless of the percentage of completion; and

(ix) the rate of profit both parties contemplated at the time the contract was negotiated.

8-304 Adjustment for Loss.

(a) In the negotiation or determination of any settlement, no profit shall be allowed if it appears that the contractor would have incurred a loss had the entire contract been completed. The amount of loss shall be negotiated or determined and an adjustment in the amount of settlement shall be made as specified in (b) or (c) below. In estimating the cost to complete, consideration shall be given to expected production efficiencies and to other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis, the contractor shall not be paid more than:

(i) the amount negotiated or determined for settlement expenses;

(ii) the contract price, as adjusted, for acceptable completed end items (see 8-306); and

(iii) the remainder of the settlement amount otherwise agreed or determined (not excluding the allocable portion of initial costs (see 15-205.42(c)), reduced by multiplying that remainder by the ratio of (A) the total contract price, to (B) the total cost incurred prior to termination plus the estimated cost to complete the entire contract;

less all disposal credits and all unliquidated advance and progress payments previously made to the contractor under the contract.

(c) If the settlement is on a total cost basis, the contractor shall not be paid more than:

(i) the amount negotiated or determined for settlement expenses; and

(ii) the remainder of the total settlement amount otherwise agreed or determined, reduced by multiplying that remainder by the ratio of (A) the total contract price, to (B) that remainder plus the estimated cost to complete the entire contract;

less all disposal and other credits, all advance and progress payments, and all other amounts previously paid to the contractor under the contract.

8–305 Deductions. From the amount payable to the contractor under a settlement, there shall be deducted (i) the agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds of sale of any materials sold by him, which have not otherwise been paid or credited to the Government; (ii) the fair value, as determined by the TCO, of any part of the termination inventory which, prior to transfer of title to the Government or to a buyer pursuant to Section XXIV, is destroyed, lost, stolen, or so damaged as to become undeliverable, except for normal spoilage or to the extent the Government has expressly assumed the risk of loss; and (iii) such other amounts as appropriate in the particular case.

8–306 Completed End Items. Promptly after the effective date of termination, the TCO shall have all undelivered completed end items inspected and accepted if they comply with the prime contract requirements, and shall determine which accepted end items shall be delivered under the contract. The contractor shall be paid for completed end items so accepted and delivered by invoicing them at the contract price in the usual manner and shall not include such end items in his termination claim. Where completed end items, though accepted, are not to be delivered under the contract, the contractor shall include such end items in his settlement proposal at the contract price, appropriately adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

8–307 Settlement Proposals.

8–307.1 *Submission of Settlement Proposals.*

(a) Subject to the provisions of the Termination clause in the contract, the contractor should promptly submit to the TCO a settlement proposal setting forth the amount claimed to be due by reason of the termination. The proposal must be submitted within one year from the effective date of the termination, unless the period has been extended in accordance with the terms of the contract. Termination charges under a single prime contract involving two or more divisions or units of the prime contractor must be consolidated and included in a single termination claim.

(b) The settlement proposal must cover all elements of the contractor's claim, including settlements with subcontractors. With the consent of the TCO, proposals may be filed in successive steps covering separate portions of a claim. Such interim proposals shall include all costs of a particular type, except as the TCO may authorize otherwise.

(c) Settlement proposals must be in the form prescribed in 8–802 unless they are inadequate for a particular contract. Settlement proposals must be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs, may be used in preparing settlement proposals; *provided*, that such costs are determined in accordance with generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the TCO. A contractor shall not be required to maintain unduly elaborate cost accounting systems merely because his contracts may subsequently be terminated.

(d) DD Form 831 (see 8-802.3, 16-702.4 and F-200.831) may be used when the total claim is less than $10,000 unless otherwise instructed by the TCO. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated wherever possible and must not be divided in such a way as to bring them below $10,000.

(e) The Schedule of Accounting Information, DD Form 546, must be submitted for each termination under a contract on which a claim for reimbursement of costs is made, except that the Schedule is not required when the Short Form Settlement Proposal, DD Form 831, is used. Although several interim proposals may be submitted, DD Form 546 need be submitted only once unless, subsequent to filing of the original form, major changes occur in the information contained therein.

8-307.2 *Bases for Settlement Proposals.*

(a) *Inventory Basis.* Use of the inventory basis for settlement proposals is preferred. Under this basis the contractor may claim only costs chargeable or allocable to the terminated portion of the contract, and the settlement proposal must itemize separately:

(i) at purchase or manufacturing cost, each of the following metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling;
(ii) charges such as engineering costs, initial costs, and general administrative costs;
(iii) costs of settlements with subcontractors;
(iv) settlement expenses; and
(v) other proper charges.

An allowance for profit (see 8-303) or adjustment for loss (see 8-304(b)) must be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, must then be deducted.

(b) *Total Cost Basis.*

(1) When use of the inventory basis is not practicable or will unduly delay settlement, the total cost basis may be used if approved in advance by the TCO. The following are examples of situations where use of the total cost basis may be permitted by the TCO:

(i) if production has not commenced and the accumulated costs represent planning and preproduction or "get ready" expenses;
(ii) if the contractor's accounting system will not readily lend itself to the establishment of unit costs for work in process and finished products;
(iii) if the contract does not specify unit prices; or
(iv) if the termination is complete and involves a letter contract.

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination must be itemized and the costs of settlements with subcontractors and applicable settlement expenses must be added. An allowance for profit (see 8-303) or adjustment for loss (see 8-304(c)) must be made. The contract price for all end items which have been or are to be delivered and accepted must be deducted. All unliquidated

advance and progress payments, disposal and other credits known when the proposal is submitted, must also be deducted.

(3) When the total cost basis is used under a partial termination, the settlement proposal must not be submitted until completion of the continued portion of the contract. The settlement proposal must be prepared in accordance with (2) above except that all costs incurred to the date of completion of the continued portion of the contract must be included.

(c) *Other Basis*. Termination claims may not be submitted on any basis other than (a) or (b) above without the prior approval of the Chief of the Purchasing or Contract Administration Office.

8-308 Limitation on Settlements. The total amount payable to the contractor on account of a settlement, whether through negotiation or by determination, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

8-309 Equitable Adjustment in Unit Prices Under Fixed-Price Contracts in Cases of Partial Termination.

(a) A claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion thereof, asserted by the contractor in accordance with the provisions of the Termination clause pertaining to a partial termination, shall be forwarded to the PCO, except when the contractor is notified that negotiation authority has been delegated to the TCO pursuant to this Regulation. The claim shall be submitted on DD Form 633, Contract Pricing Proposal.

(b) When the PCO retains responsibility for negotiating an equitable adjustment of the price of the continued portion of the contract and execution of a supplemental agreement, he shall assure himself on the basis of evidence he deems proper (including coordination with the TCO), that no portion of any increase in price has been included in any termination settlement previously made or currently in process.

(c) The TCO responsible for the termination settlement shall assure himself, on the basis of evidence he deems proper (including coordination with the purchasing office), that no portion of the costs included in the equitable adjustment for the continued portion of the contract are included in the termination settlement.

TERMINATION OF CONTRACTS

Part 4—Additional Principles for Cost-Reimbursement Type Contracts

8–401 General Considerations. The termination clauses for cost-reimbursement type contracts (see 8–702 and 8–704) provide for the settlement of costs and of fee, if any. The provisions of the particular contract governing costs shall determine what costs are allowable.

8–402 Discontinuance of Vouchers.

(a) When the contract has been completely terminated, the contractor shall not use Standard Form 1034 (Public Voucher) after the last day of the sixth month following the month in which the termination notice is effective; however, he may elect to discontinue the use of such vouchers at any time prior thereto. When the contractor has vouchered out all costs within the six-month period, his claim for fee, if any, may be submitted on DD Form 547 (see 8–803 and F–200.547) or by letter appropriately certified. The contractor must substantiate the amount of the fee he claims. The claim for fee must be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. When the use of vouchers has been discontinued, all unvouchered costs and claim for fee, if any, shall thereafter be submitted in accordance with 8–404.

(b) When the contract has been partially terminated, the provisions of 8–405 shall be applied.

8–403 Reserved.

8–404 Procedure After Vouchers Are Discontinued.

8–404.1 *Submission of Settlement Proposal.* The contractor shall submit a settlement proposal covering unvouchered costs and his claim for a fee, if any. Such proposal shall be submitted to the TCO within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract and in the form prescribed in 8–803 and set forth in F–200.547, unless the Head of the Procuring Activity concerned authorizes modification thereof. The proposal shall contain only unvouchered costs and the contractor may not include in such proposal costs which:

(i) have been finally disallowed by the contracting officer; or

(ii) are the subject of a reclaim voucher or any costs of a similar nature.

8–404.2 *Audit of Settlement Proposal.* The TCO shall submit the settlement proposal to the Defense Contract Audit Agency for appropriate examination and recommendation in accordance with 8–208. However, if the settlement proposal is limited to an adjustment of fee, no referral to the Defense Contract Audit Agency is required.

8–404.3 *Partial Payments.* Requests for partial payments shall be made and processed in accordance with 8–213.1.

8–404.4 *Adjustment of Overhead Costs.*

(a) If the contract contains a negotiated overhead rate clause (see 3–704) and it appears that adjustment of overhead costs applicable to vouchered costs under the procedure established for determining such negotiated overhead rates will unduly delay final settlement, the TCO after obtaining appropriate information from the cognizant auditor may agree with the contractor:

(i) to negotiate the amount of overhead for the contract for the period for which fixed overhead rates have not previously been negotiated, based upon audit recommendations requested by the TCO for such purpose or utilize billing rates for this period to expeditiously effect final settlement if the billing rate appears reasonable (see 3–705(d)); or

(ii) that any overhead adjustment shall be reserved in the final settlement agreement, pending establishment of negotiated rates in accordance with Part 7 of Section III.

(b) When an amount of overhead is negotiated pursuant to (a)(i), above, the contractor will eliminate such overhead and the related direct costs on which it was based from the total pool and base used to compute overhead for other contracts performed during the applicable accounting period.

8–404.5 *Final Settlement.*

(a) The TCO shall proceed with the settlement and execution of an appropriate settlement agreement upon receipt of the audit report, if applicable, and the contract audit closing statement covering vouchered costs.

(b) The fee shall be adjusted as provided in 8–406.

(c) The final settlement agreement may include all claims of the Government and of the contractor under the terminated contract, except that no amount may be allowed for any item of cost disallowed by the contracting officer, or for any other item of cost of the same nature.

(d) The provisions of the contract governing the types of reimbursable costs shall constitute the basis of negotiations; however, if an overall settlement of costs is agreed upon, agreement on each separate element of cost is not necessary. In appropriate cases, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not, under any circumstances, be made the means of reimbursing contractors for costs which under the provisions of the contract are clearly not allowable.

8–405 Procedure for Partial Termination.

8–405.1 *General.*

(a) In the event of a partial termination, the settlement shall be limited to an adjustment of the fee, if any, and, subject to the concurrence of the PCO, a reduction in estimated cost. The fee shall be adjusted in accordance with 8–405.2 and 8–406 unless the termination contracting officer determines that:

(i) the terminated portion is clearly severable from the balance of the contract; or

(ii) performance of the contract is virtually complete, or that performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

(b) In the case of the foregoing exceptions, the procedures in 8–402 and 8–404 are applicable.

8–405.2 *Submission of Settlement Proposal* (*Fee Only*). The contractor shall submit a settlement proposal which shall be limited to a proposed reduction in the amount of fee, if any. Such proposal shall be submitted to the termination contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with terms of the contract. The proposal may be submitted in the form prescribed in 8–803 and set forth in F–200.547 or by letter appropriately certified. The contractor shall substantiate the amount of the fee he claims in accordance with 8–406.

8–405.3 *Submission of Vouchers.* In the event of a partial termination when settlement is limited to adjustment of fee, if any, the contractor shall continue to submit on Standard Form 1034 all costs reimbursable under the contract, including (i) his own costs allocable to the terminated portion of the contract, (ii) cost of settlements with subcontractors properly identified as such, and (iii) applicable settlement expenses. The contractor shall not be reimbursed for costs of settlements with subcontractors unless the approval or ratifications required pursuant to the contract have been obtained (see 8–209).

8–406 Adjustment of Fee. The adjusted fee to be paid, if any, shall be determined in the manner provided by the contract, generally based on percentage of completion of the contract or of the terminated portion thereof. Where this basis is used, factors such as the extent and difficulty of the work performed by the contractor (including but not limited to planning, scheduling technical study, engineering work production and supervision, placing and supervising subcontracts to the extent reasonably required, and work performed by the contractor in (i) stopping performance, (ii) settling claims of subcontractors, and (iii) disposing of termination inventory) shall be compared with the total work required by the contract or by the terminated portion thereof. The prime contractor's adjusted fee shall not include an allowance for fee for subcontract effort included in subcontractors' termination claims. The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion thereof is only one factor in computing the percentage of completion. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the TCO of the above factors and other relevant considerations.

8–407 Termination for Default. The right to terminate a cost-reimbursement type contract for default is provided for in the Termination clause set forth in 8–702(a). In the event of termination, the contractor shall be reimbursed his allowable costs in accordance with the clause, and an appropriate reduction shall be made in the total fee, if any, computed in accordance with the default provisions of the contract (see par. (e)(i)(D)(II) of the clause in 8–702(a)). The costs of preparing the contractor's settlement proposal are not allowable. A cost-reimbursement type contract does not contain any provision for recovery of excess costs of reprocurement after termination for default, but see paragraph (b) of the clause set forth in 7–203.5(a) with respect to failure of the contractor to replace or correct defective supplies. The procedures set forth in 8–602 and 18–618 shall be used to the extent appropriate in considering the termination for default of a cost-reimbursement type contract. A ten-day notice to the contractor prior to termination for default is required in every case by the Termination clause in 8–702(a).

Part 5—Reserved

Part 6—Termination for Default

8–600 Scope of Part. This Part sets forth policies and procedures for the utilization and application of the Default clause set forth in 8–707 for fixed-price supply contracts. (For fixed-price construction contracts, see 18–618. For cost-reimbursement type contracts, see 8–407.)

8–601 General.

(a) Termination for default is generally the exercise of a contractual right of the Government to terminate the contract in whole or in part by reason of the contractor's failure, actual or anticipatory, to perform his obligations under the contract.

(b) If the contractor can establish that his failure to perform arose out of causes beyond his control and without his fault or negligence, the contract clauses in 8–707 and 8–709 provide that a termination for default shall be deemed to have been a termination for the convenience of the Government, and the rights and obligations of the parties shall be governed accordingly.

(c) The Government may also in appropriate cases exercise termination or cancellation rights in addition to those set forth in the contract clauses (see for example, paragraph (f) of the Default clause in 8–707).

(d) For default terminations of orders under Federal Supply Schedule contracts, see 5–108.

8–602 Termination of Fixed-Price Supply Contracts for Default.

8–602.1 *The Government's Right to Terminate for Default.* Under contracts containing the Default clause in 8–707 the Government has the right, subject to the notice requirements of the clause, to terminate the whole or any part of the contract for default if the contractor (i) fails to make delivery of the supplies or to perform the services within the time specified in the contract (ii) fails to perform any other provision of the contract, or (iii) fails to make progress so as to endanger performance of the contract.

8–602.2 *Effect of Termination for Default.*

(a) Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of advance payments and progress payments, if any, applicable to such work. The Government may elect, pursuant to paragraph (d) of the Default clause (see 8–707), to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, in the manner and to the extent directed by the contracting officer. The PCO shall not use the Default clause as authority to acquire any completed supplies or manufacturing materials unless he has made certain that the Government does not already have title thereto under some other provision of the contract. In the event manufacturing materials are to be acquired by the Government under the authority of the Default clause for the purpose of furnishing the materials to any other contractor, the PCO shall take such action only after giving due consideration to the difficulties that such contractor may encounter in making use of the materials.

(b) Subject to the provisions of (c) below, the Government shall pay to the contractor the contract price for any completed supplies, and the amount agreed upon by the PCO and the contractor for any manufacturing materials, acquired by the Government pursuant to the Default clause.

(c) To protect the Government from overpayment for any completed supplies or manufacturing materials, that might result from failure to make provision for the Government's potential liability to laborers and materialmen for lien rights outstanding against such supplies or materials after the Government has paid the contractor therefore, the PCO shall take one or more of the following measures before making the payment referred to in (b) above:

(i) ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims; or whether it is feasible to obtain similar bonds to cover outstanding liens;

(ii) require the contractor to furnish appropriate statements from laborers and materialmen disclaiming any lien rights they may have to the supplies and materials;

(iii) obtain appropriate agreement by the Government, the contractor and lienors assuring release of the Government from any potential liability to the contractors or lienors;

(iv) withhold from the amount otherwise due for the supplies or materials such amount as the PCO determines to be necessary to protect the Government's interest, but only if the measures set forth in (i), (ii) and (iii) cannot be accomplished or are otherwise deemed inadequate;

(v) take any other action the PCO deems appropriate considering the particular circumstances and the degree of the contractor's solvency.

(d) The contractor is liable to the Government for any excess costs incurred in procuring supplies and services similar to those terminated for default (see 8-602.6), and for any other damages, whether or not repurchase is effected (see 8-602.7).

8-602.3 *Procedure for Default.*

(a) Where a default termination is being considered, a decision as to the type of termination action to be taken (*i.e.*, for default, for convenience or a no-cost cancellation) shall be made only after review by procurement and technical personnel, and by counsel to assure the propriety of the proposed action. The administrative contracting officer shall not issue a Show Cause Notice or Cure Notice without the prior approval of the purchasing office. Approval should be obtained by the most expeditious means including telephone or other electronic communications media. The PCO shall consider the following factors in determining whether to terminate a contract for default:

(i) the provisions of the contract, and applicable laws and regulations;

(ii) the specific failure of the contractor and, unless time does not permit, the excuses, if any, for such failure;

(iii) the availability of the supplies or services from other sources;

(iv) the urgency of the need for the supplies or services and the period of time which would be required to obtain the supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(v) the degree of essentiality of the contractor in the Government procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;

(vi) the effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments, and

(vii) any other pertinent facts and circumstances.

(b)(1) If the foregoing consideration indicates that termination for default is appropriate, the PCO should, if practicable, notify the contractor by letter of the possibility of such termination. This letter shall call the contractor's attention to his contractual liabilities in the event the contract is terminated for default and request an explanation of the contractor's failure to perform the contract. The letter may further state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists. When appropriate, the letter may invite the contractor to discuss the matter at a conference.

(2) When a termination for default appears imminent, a written notification of that fact (not an actual notice of default) may be given by the PCO to the surety at both its home and local offices.

(3) If it is requested by the surety, and agreed to by the contractor and his assignees, if any, arrangements may be made to have future checks mailed to the contractor in care of the surety. In such a case, the contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing of checks.

(4) If the contractor is a small business firm, the PCO (or in the Air Force, the contracting officer designated for the purpose) shall as a matter of information provide the nearest Small Business Administration Regional Office where the contractor is located, a copy of any cure notice or show cause letter when issued.

(c) If, after compliance with the foregoing procedures, the PCO determines that termination for default is proper, he shall, where the termination is predicated upon the contractor's failure to make timely deliveries, issue a notice of termination at once—except in the Air Force, a notice shall be issued by a contracting officer designated for this purpose. If the termination is predicated upon any other failure of the contractor, the PCO (or, in the Air Force, the contracting officer designated for this purpose) shall give the contractor written notice specifying such failure and providing a period of 10 days (or such longer period as the PCO may authorize) in which to cure such failure. Where appropriate, this notice may be made a part of the letter described in paragraph (b) above. Upon expiration of the 10 days (or longer period), the PCO—or in the Air Force a contracting officer designated for this purpose, may issue a notice of termination for default unless he determines that the failure to perform has been cured. Formats of letters that may be used by the procuring contracting officer with respect to (b) above and this paragraph (c) are set forth in 8-811.

(d) The notice of termination for default shall:

(i) set forth the contract number and date;

(ii) describe the acts or omissions constituting the default;

(iii) state that the contractor's right to proceed further with performance of the contract (or a specified portion of the contract) is terminated;

(iv) state that the supplies or services terminated may be procured against the contractor's account, and that the contractor will be held liable for any excess costs;

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(v) state that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(vi) state that the notice constitutes a decision that the contractor is in default as specified, and that the contractor has the right to appeal as specified in the Disputes clause.

If the PCO—or in the Air Force, the contracting officer designated for this purpose, has investigated the contractor's excuses for the failure to perform, the notice of termination shall also state that it constitutes a decision that the failure to perform was not due to causes beyond the control and without the fault or negligence of the contractor, and that the contractor has the right to appeal as specified in the Disputes clause.

(e) The same distribution shall be made of the termination notice as was made of the contract. A copy thereof shall also be furnished to the contractor's surety at the same time that the notice is furnished to the contractor. The surety at the same time should be requested to advise if he desires to enter into any arrangement for completion of the work. In addition, the disbursing officer involved shall be notified to withhold further payments under the terminated contract pending further advise which should be furnished at the earliest practicable time.

(f) If the PCO—or in the Air Force, the contracting officer designated for this purpose, determines that the contractor's failure to perform arose from causes beyond his control and without his fault or negligence, the PCO shall not terminate the contract for default. If it is in the best interest of the Government to do so, the contract may be terminated for the convenience of the Government.

(g) If the PCO—or in the Air Force, the contracting officer designated for this purpose, has not been able to determine, prior to issuance of the notice of termination, whether the contractor's failure to perform arose from causes beyond his control and without his fault or negligence, he shall make a written decision on that point as soon as practicable after issuance of the notice of termination. Such decision shall be delivered promptly to the contractor with a notification that he has the right to appeal as specified in the Disputes clause.

8–602.4 *Procedure in Lieu of Termination for Default.* The following courses of action, among others, are available to the PCO—or in the Air Force the contracting officer designated for this purpose, in lieu of termination for default, when in the best interest of the Government:

(i) permit the contractor, his surety, or his guarantor, to continue performance of the contract under a revised delivery schedule (see 10–112(b) for requirement of notification of surety);

(ii) permit the contractor to continue performance of the contract by means of a subcontract, or other business arrangement with an acceptable third party; *provided* the rights of the Government are adequately preserved; or

(iii) if the requirement for the supplies and services specified in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in 8–602.7, execute a no-cost termination settlement agreement utilizing the form set forth in 8–805.6 and 8–805.7 as a guide.

8–602.5 *Memorandum by the Contracting Officer.* In all cases where a contract is terminated for default or where a procedure authorized by 8–602.4 is followed, the PCO—or in the Air Force the contracting officer designated for this purpose, shall prepare a memorandum for the contract file explaining fully the reasons for the action taken.

8–602.6 *Repurchase Against Contractor's Account.*

(a) Where the supplies or services are still required after termination, repurchase of supplies or services which are the same as or similar to those called for in the contract, shall be made against the contractor's account as soon as practicable after termination. Such repurchase shall be at as reasonable a price as practicable considering the quality required by the Government and the time within which the supplies or services are required. The contract of repurchase may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed, but excess cost may be charged against the defaulting contractor for no more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract). Generally, the PCO's decision to repurchase will be made prior to issuance of the termination notice.

(b) If the repurchase is for a quantity not in excess of the undelivered quantity terminated for default, the requirements of 10 U.S.C. 2304 (a), with respect to formal advertising, are inapplicable. However, the PCO may use formal advertising procedures. If the PCO decides to negotiate the repurchase contract, he may either (1) use any authority listed in 3–201 through 3–217 (10 U.S.C. 2304(a)(1)-(17)), as appropriate, or (2) if none of those authorities to negotiate is used, the contract shall identify the procurement as a repurchase in accordance with the provisions of the Default clause in the defaulted contract. If the repurchase is for a quantity in excess of the undelivered quantity terminated for default, the entire quantity shall be treated as a new procurement.

(c) If repurchase is effected at a price in excess of the price of the supplies terminated, the PCO shall make a written demand on the contractor for the total amount of such excess giving due consideration to any increases or decreases in other ascertainable costs such as transportation, discounts, etc., and shall take such other action as is required by Appendix E, Part 6, for collecting claims in favor of the Government.

8–602.7 *Other Damages.*

(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see 8–602.4), the PCO shall take appropriate action in accordance with Appendix E, Part 6, for ascertainment and collection of any liquidated damages to which the Government may be entitled under the contract. Pursuant to the contract provisions for liquidated damages in 7–105.5, such damages are in addition to any excess cost of reprocurement.

(b) If the Government has suffered any other ascertainable damages as a result of the contractor's default, the PCO, on the basis of legal advice, shall take appropriate action to assert the Government's claim for such damage in accordance with Appendix E, Part 6.

TERMINATION OF CONTRACTS

Part 7—Clauses

8-700 Scope of Part. This Part contains directions for certain contract clauses related to the termination of contracts for the convenience of the Government and for default. Special purpose clauses when authorized by Departmental procedures and consistent with the policies set forth in this Regulation may be used in appropriate cases.

8-701 Termination Clause for Fixed-Price Contracts.

(a) Except as otherwise permitted by 8-705, the clause in 7-103.21(b) shall be used in any fixed price contract in excess of $10,000 for supplies or experimental, developmental, or research work other than experimental, developmental, or research work with educational or nonprofit institutions, when no profit is contemplated. The clause in 7-602.29(a) shall be used in all fixed price construction contracts in excess of $10,000.

(b) The clause in 7-607.4 covering terminations for convenience and terminations for default shall be included in all fixed-price architect-engineer contracts.

(c) In accordance with E-621, the last sentence of paragraph (j) of the clauses in 7-103.21(b) and 7-602.29(a) may be deleted in contracts with agencies of the United States Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

8-702 Termination Clause for Cost-Reimbursement Type Contracts.

(a) The clause in 7-203.10 shall be used in any cost-reimbursement type contract, as defined in 3-405, for supplies and experimental, developmental, or research work other than experimental, developmental, or research work with educational or nonprofit institutions where no fee is contemplated. The clause in 7-605.26 shall be used in all cost-reimbursement type construction contracts.

(b) Reserved.

(c) In any contract for Architect-Engineer services where the clause in 7-203.10 is used, the term "Architect-Engineer" shall be substituted for the term "Contractor" wherever that term appears in the clause and paragraph (e)(i)(D)(II) shall be deleted and the following clause substituted therefor:

> (II) in the event of the termination of this contract for the default of the Architect-Engineer, the total fee payable shall be such proportionate part of the fee as the weighted value of the actual working drawings completed bears to the weighted value of the working drawings required or contemplated by the contract; (1970 JUL)

(d) In accordance with E-621, the last sentence of paragraph (j) of the clauses in 7-203.10 and 7-605.26 may be deleted in contracts with agencies of the United States Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

8-703 Termination Clause for Cost Reimbursement Type Subcontracts. The following termination clause is suggested for use in cost-reimbursement type subcontracts.

TERMINATION OF CONTRACTS

SUBCONTRACT TERMINATION CLAUSE—COST REIMBURSEMENT TYPE (1973 APR)

(a) The performance of work under the contract may be terminated by the Buyer in accordance with this clause in whole, or from time to time in part:

- (i) whenever the Seller shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Seller to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of seven days (or such longer periods as the Buyer may allow) after receipt from the Buyer of a notice specifying the default; or
- (ii) whenever for any reason the Buyer shall determine that such termination is in the best interest of the Buyer.

Any such termination shall be effected by delivery to the Seller of a Notice of Termination specifying whether termination is for the default of the Seller or for the convenience of the Buyer, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (i) above, it is determined for any reason that the Seller was not in default pursuant to (i), or that the Seller's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Seller pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (ii) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Buyer, the Seller shall:

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services of facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;
- (iv) assign to the Buyer in the manner, to the extent and as directed by the Buyer all of the right, title, and interest of the Seller under the orders or subcontracts so terminated, in which case the Buyer shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- (v) with the approval or ratification of the Buyer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;
- (vi) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent, and at the times directed by the Buyer, deliver (A) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Buyer, and (C), the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Seller has been or will be reimbursed under this contract;
- (vii) Use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Buyer, any property of the types referred to in (vi) above; *provided*, however, that the Seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Buyer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Buyer to the Seller under this contract or shall

otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Buyer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary, or as the Buyer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Seller and in which the Buyer or the Government has or may acquire an interest.

The Seller shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause.

(c) After receipt of a Notice of Termination, the Seller shall submit to the Buyer his termination claim in the form and with the certification prescribed by the Buyer. Such claim shall be submitted promptly, but in no event later than six months from the effective date of termination, unless one or more extensions in writing are granted by the Buyer, upon request of the Seller made in writing within such six-month period or authorized extension thereof. However, if the Buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. Upon failure of the Seller to submit his termination claim within the time allowed, the Buyer may determine, on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination and shall thereupon pay to the Seller the amount so determined.

(d) Subject to the provisions of paragraph (c), the Seller and the Buyer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Seller by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Seller shall be paid the agreed amount.

(e) In the event of the failure of the Seller and the Buyer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to cost and fee, or as to the amount of the fee, to be paid to the Seller in connection with the termination of work pursuant to this clause, the Buyer shall determine, on the basis of information available to him, the amount, if any, due to the Seller by reason of the termination and shall pay to the Seller the amount determined as follows:

(i) if the settlement includes cost and fee—

(A) there shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Seller for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Buyer; *provided*, however, that the Seller shall proceed as rapidly as practicable to discontinue such costs;

(B) there shall be included therein so far as not included under (A) above, the costs of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(v) above, which are properly chargeable to the terminated portion of the contract;

(C) there shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory; *provided*, however, that if the termination is for default of the Seller there shall not be included any amounts for the preparation of the Seller's settlement proposal; and

(D) there shall be included therein a portion of the fee payable under the contract determined as follows:

(I) in the event of the termination of this contract for the convenience of the Buyer and not for the default of the Seller, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(II) in the event of the termination of this contract for the default of the Seller, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Buyer bears to the total number of articles of a like kind called for by this contract;

if the amount determined under this subparagraph (i) is less than the total payment theretofore made to the Seller, the Seller shall repay to the Buyer the excess amount; or

(ii) if the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (i)(D) above.

(f) In arriving at the amount due the Seller under this clause there shall be deducted (i) all unliquidated advance or other payments theretofore made to the Seller, applicable to the terminated portion of this contract, (ii) any claim which the Buyer may have against the Seller in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Seller or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Buyer.

(g) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Seller and the Buyer, and such adjustment shall be evidenced by an amendment to this contract.

(h) The Buyer may, from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Seller in connection with the terminated portion of the contract whenever in the opinion of the Buyer the aggregate of such payments shall be within the amount to which the Seller will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Seller to the Buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the Seller to the date on which such excess is repaid to the Buyer; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Seller's claim by reason of retention or other disposition of termination inventory until ten (10) days after the date of such retention or disposition, or such later date as determined by the Buyer by reason of the circumstances.

(End of clause)

8–704 Research and Development Contracts with Educational and Other Nonprofit Institutions.

8–704.1 *Termination Clause*.

(a) The clause in 7–302.10(b) shall be used in any contract for experimental, developmental, or research work (whether fixed price or cost reimbursement type) with an educational institution when such contract is placed on a no-fee or no-profit basis except that in the case of organizations other than educational institutions, paragraph (d) shall be deleted and the paragraph in 7–302.10(c) shall be used.

(b) The clause in 7–302.10(c) shall be used in contracts with a nonprofit organization other than an educational institution.

8–704.2 *Suggested Clause for Subcontracts*. The clause in 7–302.10(b), suitably altered to indicate the relationship between the prime contractor and subcontractor, is suggested for use in subcontracts placed with educational or nonprofit institutions; *provided*, such subcontracts incorporate, or are negotiated on the basis of, the cost principles set forth in Section XV; and *provided further*, such subcontracts are placed on the no-fee or no-profit basis.

8–705 Short Form Termination Clauses for Fixed-Price Type Contracts.

8–705.1 *Supply and Service Contracts.*

(a) To facilitate the handling of purchases under fixed-price supply or service contracts not to exceed $10,000, the short form termination clause in 7–103.21(a) is authorized for use in lieu of any other clause providing for termination for the convenience of the Government; *provided*, such contracts obligate the Government to order or otherwise to be liable for a minimum quantity.

(b) To facilitate the obtaining of services where it can reasonably be determined that the kind and volume of service required would not, in the event of termination for convenience of the Government, present a basis for a termination claim other than for services rendered (such as, but not limited to, most contracts for rental of unreserved garage space, meals for inductees, or laundry and dry-cleaning services), the short form termination clause in 7–1902.16(b) is authorized for use in such service contracts, regardless of dollar value, in lieu of any other clause providing for termination for the convenience of the Government.

(c) Where DD 1155 is utilized for purchases not in excess of $10,000 and the additional general provisions are incorporated, clause 19 of that form shall be used in lieu of those specified in (a) and (b) above.

8–705.2 *Construction Contracts.* Generally, there is no need for a termination clause in construction contracts not in excess of $10,000. However, when the contracting officer determines that a termination clause should be included in such a contract, the clause in 7–602.29(b) shall be used, except where DD Form 1155 is utilized, clause 19 of that form shall be used in lieu of the clause in 7–602.29(b).

8–705.3 *Reserved.*

8–706 Subcontract Termination Clause. The following termination clause is suggested for use in fixed-price subcontracts.

TERMINATION (1974 APR)

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller shall:

- (i) stop work under the contract on the date and to the extent specified in the Notice of Termination;
- (ii) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the contract as may not be terminated;
- (iii) terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;
- (iv) assign to the buyer, in the manner, and to the extent directed by the buyer all of the right, title and interest of his seller under the orders or subcontracts so terminated;
- (v) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;
- (vi) transfer title and deliver in the manner, to the extent, and at the times directed by the buyer (A) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the

performance of, the work terminated by the Notice of Termination, and (B) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(vii) use his best efforts to sell in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (vi) above, *provided*, however, that the seller (A) shall not be required to extend credit to any purchaser, and (B) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer; and *provided further* that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

(viii) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(ix) take such action as may be necessary or as the buyer may direct for protection and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer his termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination, unless one or more extensions in writing are granted by the buyer, upon request of seller made in writing within such six-month period or authorized extensions thereof. However, if the buyer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such six-month period or any extension thereof. Upon failure of the seller to submit his termination claim within the time allowed, the buyer may determine, on the basis of information available to him, the amount, if any, due to the seller in respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, he shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts; *provided*, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer shall pay to the seller the amounts determined by the buyer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (d):

(i) for completed supplies or services accepted by the buyer (or sold or acquired as provided in paragraph (b)(vii) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(ii) the total of—

(A) the cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies or services paid or to be paid for under (i) above; and

(B) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(v) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (A) above; and

(C) a sum, as profit on (A) above, determined by the buyer pursuant to 8-303 of the Armed Services Procurement Regulation, in effect as of the date of execution of this contract, to be fair and reasonable; *provided*, however, that if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (C) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(iii) the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (i) and (ii) above shall not exceed the total contract price reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (i) and (ii)(A) above the fair value as determined by the buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b)(vii).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (i) all unliquidated advance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (ii) any claim which the buyer may have against the seller, in connection with this contract, and (iii) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, the seller may file with the buyer a claim for an equitable adjustment in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and an appropriate equitable adjustment shall be made in such price or prices. Any claim by the seller for an equitable adjustment under this clause must be asserted within forty-five (45) days from the effective date of the termination notice, unless an extension is granted in writing by the buyer.

(h) The buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by the seller in respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, for the period from the date such excess payment is received by the seller to the date on which such excess is repaid; *provided*, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in Section VIII of the Armed Services Procurement Regulation in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller shall—from the effective date of termination until the expiration of three years after final settlement under the contract—preserve and make available to the buyer and to the Government at all reasonable times at the office of the seller, all his books, records, documents, and other evidence bearing on the costs and expenses of the seller under the contract and relating to the work terminated hereunder, or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

(End of clause)

(End of clause)

In accordance with E–621, the last sentence of paragraph (h) in the above clause may be deleted in subcontracts with agencies of the United States Government, foreign governments or agencies thereof, state or local governments or agencies thereof, or nonprofit contracts with nonprofit educational or research institutions.

8–707 Default Clause for Fixed-Price Supply Contracts. Insert the clause in 7–103.11.

8–708 Excusable Delays Clause for Cost-Reimbursement Type Contracts.

(a) *General*. The clause in 7–203.11 shall be used in all cost-reimbursement type supply contracts as defined in 7–202, in all cost-reimbursement type construction contracts, and in all cost-reimbursement type research and development contracts that contain the Termination clause in 7–203.10(a). It may be used in contracts that contain the Termination clauses in 7–302.10(b) or (c).

(b) *Architect-Engineer Contracts*. The following clause shall be inserted in each cost-reimbursement type Architect-Engineer contract:

EXCUSABLE DELAYS (JAN 1965)

The Architect-Engineer shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Architect-Engineer to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Architect-Engineer. Such causes may include but are not restricted to: acts of God or of the public enemy; acts of the Government in either its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes; and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Architect-Engineer. Upon request of the Architect-Engineer, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the completion dates shall be revised accordingly subject to the rights of the Government under the clause of this contract entitled "Termination".

(End of clause)

8–709 Default Clause for Fixed-Price Construction Contracts. The clause in 7–602.5 shall be used in each fixed-price construction contract in excess of $10,000.

8–710 Default Clause for Fixed-Price Research and Development Contracts. See 7–302.9.

8–711 Default Clause for Fixed-Price Architect-Engineer Contracts. See 7–607.4.

8–712 Special Termination Costs.

(a) The clause in 7–108.3 is authorized for use in an incrementally funded contract when:

- (i) the contract term is two years or more;
- (ii) the contract is estimated to require total RDT&E financing in excess of $25 million, or total production investment in excess of $100 million;
- (iii) adequate resources are available within existing appropriated amounts to cover the contingent reserved liability for special termination costs in the event of contract termination; and

(iv) the use of the clause in the contract is approved by the Secretary of the Department concerned or his designee.

The clause may be used in circumstances other than those in (i) and (ii) above when approved by the Secretary of the Department concerned or his designee. Any addition to the categories of special termination costs listed in paragraph (a)(i) through (v) of the clause in 7–108.3 shall be processed in accordance with 1–109.3.

(b) The contractor and the contracting officer shall agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Such amount shall be inserted in the clause.

(c) A provision allowing for negotiated adjustments of the amount reserved for special termination costs may be inserted as paragraph (d) of the clause. Contract provisions for periodic adjustments by mutual agreement of the parties may be established based on, among other things, (i) set time periods within the contract, (ii) the Government's incremental assignment of funds to the contract, or (iii) the time when certain performance milestones are accomplished by the contractor. Provisions for such adjustments may be considered desirable in contracts containing unusually long performance periods, or in contracts where the contractor's cost risk associated with the contingent special termination costs, in the event of Government termination, fluctuates extensively over the period of the contract, depending on the scope of work to be performed during a certain period of the contract, or the amount of funds to be assigned to the contract during any one increment.

TERMINATION OF CONTRACTS

Part 8—Forms

8-800 Scope of Part. This Part prescribes certain forms related to the termination and settlement of contracts.

8-801 Notice of Termination.

8-801.1 *Telegraphic Notice of Termination.*

(a) The following form of telegraphic notice is approved for use when a contract for supplies is being completely terminated.

DATE:
XYZ CORPORATION
NEW YORK, NEW YORK
YOUR CONTRACT NO............ .... IS HEREBY TERMINATED IN ITS ENTIRETY PURSUANT TO CLAUSE .... OF THE CONTRACT EFFECTIVE [*Here insert* "IMMEDIATELY" *or* "ON .... 19........."(*Inserting the date*) *or* "AS SOON AS YOU HAVE DELIVERED THEREUNDER INCLUDING PREVIOUS DELIVERIES THE FOLLOWING ITEMS" (*listing items*)]. IMMEDIATELY STOP ALL WORK, TERMINATE SUBCONTRACTS AND PLACE NO FURTHER ORDERS EXCEPT TO EXTENT (*Insert if applicable*—NECESSARY TO PERFORM ANY PORTION THEREOF NOT TERMINATED HEREBY OR) THAT YOU OR A SUBCONTRACTOR WISH TO RETAIN AND CONTINUE FOR OWN ACCOUNT ANY WORK IN PROCESS OR OTHER MATERIALS. TELEGRAPH SIMILAR INSTRUCTIONS TO ALL SUBCONTRACTORS AND SUPPLIERS. INSTRUCTIONS FOLLOW.

....
(*Name and Rank*)
Contracting Officer

(b) The following form of telegraphic notice is approved for use when a contract for supplies is being partially terminated.

DATE:
XYZ CORPORATION
NEW YORK, NEW YORK
YOUR CONTRACT NO. .... IS HEREBY PARTIALLY TERMINATED PURSUANT TO CLAUSE .... OF THE CONTRACT EFFECTIVE ON .... 19........, ON WHICH DATE YOU WILL REDUCE ITS TOTAL NUMBER OF ITEMS TO BE DELIVERED AS FOLLOWS (*Inserting instructions as to reduced deliveries*) IMMEDIATELY STOP ALL WORK, TERMINATE SUBCONTRACTS AND PLACE NO FURTHER ORDERS EXCEPT TO EXTENT NECESSARY TO PERFORM ANY PORTION THEREOF NOT TERMINATED HEREBY OR THAT YOU OR A SUBCONTRACTOR WISH TO RETAIN AND CONTINUE FOR OWN ACCOUNT ANY WORK IN PROCESS OR OTHER MATERIALS. TELEGRAPH SIMILAR INSTRUCTIONS TO ALL SUBCONTRACTORS AND SUPPLIERS. INSTRUCTIONS FOLLOW.

....
(*Name and Rank*)
Contracting Officer

(c) The following form of telegraphic notice is approved for use when a contract for construction is being completely terminated for the convenience of the Government.

DATE:
XYZ CORPORATION
NEW YORK, N.Y.

YOUR CONTRACT NO. .... FOR CONSTRUCTION OF .... IS HEREBY TERMINATED EFFECTIVE IMMEDIATELY FOR THE CONVENIENCE OF THE GOVERNMENT PURSUANT TO CLAUSE .... OF THE CONTRACT. IMMEDIATELY STOP ALL WORK, TERMINATE SUBCONTRACTS AND PLACE NO FURTHER ORDERS. TELEGRAPH SIMILAR INSTRUCTIONS TO ALL SUBCONTRACTORS AND SUPPLIERS. INSTRUCTIONS FOLLOW.

....
(Name and Rank)
Contracting Officer

(d) The following form of telegraphic notice is approved for use when a contract for construction is being partially terminated for the convenience of the Government:

DATE:
XYZ CORPORATION
NEW YORK, N.Y.

YOUR CONTRACT NO. .... FOR CONSTRUCTION OF .... IS HEREBY PARTIALLY TERMINATED EFFECTIVE IMMEDIATELY FOR THE CONVENIENCE OF THE GOVERNMENT PURSUANT TO CLAUSE .... OF THE CONTRACT TO THE FOLLOWING EXTENT .... IMMEDIATELY STOP ALL WORK, TERMINATE SUBCONTRACTS AND PLACE NO FURTHER ORDERS EXCEPT TO EXTENT NECESSARY TO PERFORM PORTION THEREOF NOT TERMINATED HEREBY TELEGRAPH SIMILAR INSTRUCTIONS TO ALL SUBCONTRACTORS AND SUPPLIERS. INSTRUCTIONS FOLLOW.

....
(Name and Rank)
Contracting Officer

8–801.2 *Notice of Termination.*

(a) The following form of Notice of Termination is approved for use when a prime contract for supplies and services is being terminated. With appropriate modifications, it is suitable for use in terminating subcontracts.

NOTICE OF TERMINATION TO PRIME CONTRACTORS

[*Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.*] Insert text of Notice in Block 12 of SF 30 (see 26–702).

1. Effective Date of Termination. This will confirm the Government's telegram to you dated ...., 19........, terminating [in part] your Contract No. .... (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with the clause thereof entitled "Termination for the Convenience of the Government" [*or, in the case of a cost-reimbursement-type contract,* "Termination"]. Such termination is effective on the date and in the manner stated in such telegram.

1. *Effective Date of Termination.* You are notified that your Contract No. .... (hereinafter referred to as "the contract") is hereby terminated [in part] for the convenience of the Government, in accordance with the clause hereof entitled "Termination for the Convenience of the Government" [*or in the case of a cost-reimbursement-type contract, "Termination"*]. Such termination will be effective: .... [*Here insert either* "immediately upon your receipt of this Notice" *or* "on ...., 19—," (*inserting the date*) *or* "as soon as you have delivered under the contract the following number of each of the items listed below, including those heretofore delivered, to wit: ...." *or*, "on ...., 19—, on which date you are hereby directed to

reduce the total number of items to be delivered under the contract as follows": (*here insert instructions as to reduced deliveries.*)]

2. *Cessation of Work and Notification to your Immediate Subcontractors.* (a) You shall stop all work, make no further shipment, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work-in-process for reasons of safety, or to clear [or avoid damage to] equipment or to avoid immediate complete spoilage of work-in-process having a definite commercial value, or otherwise to prevent undue loss to the Government. [If you believe the authorization referred to in (3) above is necessary or advisable, you shall immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.] You shall keep adequate records of your compliance with this paragraph 2(a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination, and (iii) the extent of completion of performance on such effective date.

(b) You shall give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government, (2) state that it has been terminated (*or* terminated in part, *if that is the case*) for the convenience of the Government, (3) instruct him to stop all work, to make no further shipments to place no more orders, and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in paragraph 2(a)), (4) direct him to submit his settlement proposal promptly in order to expedite settlement, and (5) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated contract or which have resulted in or which are intended to result in a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain, or dispose of, (The Contracting Officer shall also be promptly notified of any such proceedings brought after receipt of this Notice.)

(d) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. *Termination Inventory.*

(a) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes: [*insert proper identification or* "None"].

(b) In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see ASPR, Section XXIV.

4. *Completed End Items.* You shall notify the Contracting Officer of the number of articles completed under the contract and still on hand, and arrange with him for their delivery or other disposal. Subject to ASPR 8-306, you will invoice acceptable completed end items under the contract in the usual way and not include them in your settlement proposal.

5. *Patents.* Your attention is called to any provisions of the contract which may require you to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting all inventions, discoveries, and patent applications made by you in the performance of the contract. You are urged to forward such disclosures and instruments of license or assignment to the Contracting Officer promptly, inasmuch as these contractual obligations must be complied with before execution of the final settlement agreement. This paragraph may be disregarded if the contract contains no such patent provisions.

6. *Settlements With Subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the provisions of ASPR Section VIII.

7. *Employees Affected.* (a) If this termination, together with all other outstanding terminations, will necessitate a significant reduction in your work force, as described in (b) below, you are

urged to (1) promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that they can take timely action in assisting displaced workers; (2) give affected employees maximum practical advance notice of the employment reduction, and inform them of the facilities and services available to them through the local State Employment Service Offices; (3) advise affected employees to file applications with State Employment Service in order to qualify for unemployment insurance, if necessary; (4) inform officials of local unions having agreements with you of the impending reduction-in-force; and (5) inform local Chamber of Commerce and other appropriate organizations, which are prepared to offer practical assistance in finding employment for displaced workers, of impending reduction-in-force.

(b) Normally, a reduction of 200 or more workers during any one month of the period of the reduction-in-force will be considered significant. However, a reduction of a lesser number of workers in any one month, or in several successive months, also may have a serious adverse impact in a small community affected by other layoffs.

(c) To the extent appropriate and practicable, you are requested to urge subcontractors, if any, to take actions similar to those described above.

8. The contract administration office named in your contract will furnish you the name of the Contracting Officer who will be in charge of the settlement of this termination, and who will, upon request, provide you with the necessary settlement forms. Matters not covered by this Notice should be brought to the attention of the undersigned.

9. Please acknowledge receipt of the Notice as provided below.

....
(Contracting Officer)

Acknowledgment of Notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on ...., 19.......... Two copies of this Notice, both signed, are herewith returned.

....
(Name of Contractor)
By ....
....
(Title)

(End of Notice)

(b) The following form of Notice of Termination is approved for use to confirm telegraphic notification where a contract for construction has been totally or partially terminated.

NOTICE OF TERMINATION

Insert text of Notice in Block 12 of SF 30 (see 26-702).

1. *Effective Date of Termination.* This will confirm the Government's telegram to you dated ...., terminating [in part] your Contract No. .... (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with Clause .... thereof. Such termination is effective on the date and in the manner stated in such telegram.

2. *Cessation of Work and Notification to Your Immediate Subcontractors.*

(a) You shall stop all work, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this notice or (2) to the extent necessary to perform any work directed by the Contracting Officer.

(b) You shall give notice of termination to each of your immediate subcontractors and suppliers who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government; (2) state that it has been terminated for the convenience of the Government and the extent thereof; (3) instruct him to stop all work, to place no more orders and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in 2(a) above); (4) direct him to submit his settlement proposal promptly in order to expedite settlement; and (5) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of any pending or subsequent legal proceedings which relate to any subcontracts or purchase orders under the terminated contract.

(d) You shall take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. *Termination Inventory.*

(a) You shall forthwith transfer title to and deliver to the Government, in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes [insert proper identification or "None".]

(b) In connection with settlement of your claim, it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see ASPR, Section XXIV.

4. *Settlements With Subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the applicable provisions of the Armed Services Procurement Regulation.

5. This office will be in charge of the settlement of your claim and should be consulted on any matter not covered by this Notice.

6. Please acknowledge receipt of this Notice as provided below.

Acknowledgment of Notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on .... Two copies of this Notice, both signed, are returned herewith.

....
(Name of Contractor)

By ....
....
(Title)

(End of Notice)

(c) The following form of Notice of Termination is approved for use where a contract for architect-engineer services is being terminated for the convenience of the Government.

NOTICE OF TERMINATION

Insert text of Notice in Block 12 of SF 30 (see 26–702).

1. *Effective Date of Termination.* You are notified that your Contract No. .... covering .... is hereby terminated [in part] for the convenience of the Government in accordance with the clause hereof entitled "Termination for the Convenience of the Government." Such termination will be effective immediately upon receipt of this notice.

2. *Cessation of Work.* You shall stop all work under the contract except (1) to the extent necessary to perform any portion thereof not terminated by this notice or (2) to the extent necessary to perform any work directed by the Contracting Officer.

TERMINATION OF CONTRACTS

3. The contract administration office named in your contract will furnish you the name of the Contracting Officer who will be in charge of the settlement of this termination, and who will, upon request, provide you with the necessary settlement forms. Matters not covered by this Notice should be brought to the attention of the undersigned.

4. Please acknowledge receipt of this Notice as provided below.

Acknowledgment of Notice

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on .... Two copies of this Notice, both signed, are returned herewith.

....
Architect-Engineer
By ....
Name
....
Title

(End of Notice)

8-802 Forms for Settlement of Fixed-Price Contracts. The forms listed in 8-802.1 through 8-802.10 and set forth in F-200.540, F-200.541, F-200.831, F-200.542, F-200.542c, F-200.543, F-200.543c, F-200.544, F-200.544c, F-200.545, F-200.545c, F-200.832, F-200.546, and F-200.548 are prescribed for use in settling terminated fixed-price contracts (except see 8-307.1(c)).

8-802.1 *DD Form 540 — Settlement Proposal—Inventory Basis*. See F-200.540.

8-802.2 *DD Form 541 — Settlement Proposal—Total Cost Basis*. See F-200.541.

8-802.3 *DD Form 831 — Settlement Proposal—Short Form*. See F-200.831.

8-802.4 *DD Form 542 — Inventory Schedule A—Metals in Mill Product Form and DD Form 542c—Inventory Schedule A—Continuation Sheet*. See F-200.542 and F-200.542c.

8-802.5 *DD Form 543 — Inventory Schedule B—Raw Materials and DD Form 543c, Inventory Schedule B—Continuation Sheet*. See F-200.543 and F-200.543c.

8-802.6 *DD Form 544 — Inventory Schedule C—Work in Process and DD Form 544c—Inventory Schedule C—Continuation Sheet*. See F-200.544 and F-200.544c.

8-802.7 *DD Form 545 — Inventory Schedule D—Dies, Jigs, Fixtures, etc., and Special Tools; and DD Form 545c—Inventory Schedule D, Continuation Sheet*. See F-200.545 and F-200.545c.

8-802.8 *DD Form 832 — Inventory Schedule E—Short Form for Use With DD Form 831 Only*. See F-200.832.

8-802.9 *DD Form 546 — Schedule of Accounting Information*. DD Form 546 is required to be filed only once with respect to any termination. It is not required when the settlement proposal is submitted on DD Form 831. See F-200.546.

8-802.10 *DD Form 548 — Application for Partial Payment*. See F-200.548.

8-802.11 *DD Form 1598 — Contract Termination Status Report*. See F-200.1598.

8–803 DD Form 547—Settlement Proposal for Cost-Reimbursement Type Contracts. DD Form 547 is to be used by prime contractor submitting termination claims on cost-reimbursement type contracts. It is also suitable for use in connection with terminated cost-reimbursement type subcontracts. See F–200.547.

8–804 Reserved.

8–805 Forms of Settlement Agreement. See 8–210. In Architect Engineer contracts, substitute *Architect-Engineer* for *Contractor* wherever it appears.

8–805.1 *Settlement Agreement for Use in Settling Fixed-Price Prime Contracts After Complete Termination.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19— between the **UNITED STATES OF AMERICA** (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and ....

(i) a corporation organized and existing under the Laws of the State of ....;

(ii) a partnership consisting of ....;

(iii) an individual doing business as ....;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No................ under date of ...., 19....... which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, The Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated .... the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

WHEREAS, as used herein the following terms shall have the meanings hereinafter set forth:

The term "*termination inventory*" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "*subcontract*" means any contract as defined in ASPR 1–201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "*scrap*" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of its immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 5. a. The Contractor has received the sum of $................ on account of work and services performed, or articles delivered, under the completed portion of the contract. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the Contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of an invoice or voucher, the sum of $ .... *(insert net amount of settlement)*, arrived at by deducting from the sum of $................ *[for claim submitted on inventory basis, insert gross amount of settlement; for claim submitted on total cost basis, insert gross amount of settlement less amount set forth in 5a above]*, (1) the amount of $........................ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon), and (2) the amount of $......................... representing all applicable property disposal credits [and (3) the amount of $........................ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].* (**To be inserted where appropriate.*) Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ARTICLE 6. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 8-210.2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19........ [*insert reference to applicable Renegotiation Act*].

(2) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports, and licenses, and in covenants of indemnity against patent risks.

(3) All rights of the Government to take the benefit of agreements or judgments reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(4) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(5) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(6) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(7) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to the Contractor for the performance of this contract.

(8) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(9) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*]

In Witness Whereof, etc.

(End of Agreement)

8–805.2 *Settlement Agreement for Use in Settling Fixed-Price Prime Contracts After Partial Termination.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19....... between the **UNITED STATES OF AMERICA** (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and ....

(i) a corporation organized and existing under the Laws of the State of ....;

(ii) a partnership consisting of ....;

(iii) an individual doing business as ....;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. .... under date of ...., 19— which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

TERMINATION OF CONTRACTS

WHEREAS, by Notice of Termination dated .... the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as the "terminated portion of the contract"; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "*termination inventory*" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "*subcontract*" means any contract as defined in ASPR 1-201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "*scrap*" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (*specify the terminated portion clearly as to items, including* (*i*) *item numbers,* (*ii*) *descriptions,* (*iii*) *quantity terminated;* (*iv*) *unit price of items,* (*v*) *total price of terminated items, and* (*vi*) *any other explanation necessary to avoid uncertainty or misunderstanding.*)

ARTICLE 2. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 3. a. The Contractor certifies that, prior to the execution of this agreement, each of the contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 4. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 5. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 6. Upon execution of this agreement, the Government agrees to pay to the Contractor or his assignee, upon presentation of an invoice or voucher, the sum of $................. (*insert net amount of settlement*), arrived at by deducting from the sum of $............... [*insert gross amount of settlement*], (1) the amount of $............... representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the contract and (2) the amount of $............... representing all applicable property disposal credits. Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the contract, except as hereinafter provided in Article 7.

ARTICLE 7. Upon payment of said sum of $............. [*insert net amount of settlement*], all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease; *provided*, however, that nothing herein contained shall impair or affect in any way any covenants, terms or conditions of the contract relating to the completed or continued portion thereof; and *provided further* that, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved.

(*The following list of reserved or excepted rights and liabilities relating to the terminated portion of the contract is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 8–210.2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exception needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.*)

(1) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19........ [*insert reference to applicable Renegotiation Act*].

(2) All rights of the Government to take the benefit of agreements or judgments reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(3) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*]

(4) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports, and licenses, and in covenants of indemnity against patent risks.

(5) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(6) All rights and liabilities of the parties with respect to any contract termination inventory stored for the Government pursuant to Article 2 hereof.

In Witness Whereof, etc.

(End of Agreement)

8–805.3 *Partial Settlement Agreement for Use in Settling Fixed-Price Prime Contracts After Complete or Partial Termination Where Settlement Pertains Only to Settlements With Subcontractors.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19— between the **UNITED STATES OF AMERICA** (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and...............................

(i) a corporation organized and existing under the Laws of the State of.............;

(ii) a partnership consisting of ....;

(iii) an individual doing business as ....;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. .... under date of ...., 19........ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated .... the Government advised the Contractor of the [complete termination of the contract for the convenience of the Government;]* [partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract";]* (**Insert appropriate phrase.*) and

WHEREAS, the Contractor, in connection with the performance of the contract, has entered into the following subcontracts (among others):** (***Insert where appropriate.*) (**Insert here a list of the terminated subcontracts included in this settlement**), which subcontracts were terminated by the Contractor in accordance with the termination for convenience clause of the contract and in accordance with the Notice of Termination received by him from the Government; and

WHEREAS, the parties desire to settle that portion of the termination claim of the Contractor which is based upon the termination of the subcontracts listed herein; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "*termination inventory*" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "*subcontract*" means any contract as defined in ASPR 1-201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "*scrap*" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in its claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to such subcontract termination inventory, to the extent that it is not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 2. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 3. The Contractor certifies that, with respect to all items of subcontract termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. Upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of an invoice or voucher, the sum of $ ...., which sum, [together with the amount of $................ heretofore paid the Contractor as partial, progress, or advance payments],* (**Insert where appropriate.*) constitutes payment in full and complete settlement, except as hereinafter provided in Article 5, of the amount due the Contractor with respect to that portion of his termination claim which is based upon termination of the subcontracts listed hereinabove. [*The first sum to be inserted above should be the net amount of this partial settlement, arrived at by deducting from the gross amount of settlements with subject subcontractors as approved by the Contracting Officer; the second amount to be inserted above, which is that portion of partial, progress, or advance payments liquidated by this agreement.*]

ARTICLE 5. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[*Insert here a list of the reserved or excepted rights and liabilities of the Government and the Contractor (see 8-210.2) Reference is made to instructions set forth in Article 6 of the agreement set forth in 8-805.1 and Article 7 of the agreement set forth in 8-805.2 and to the reserved or excepted rights and liabilities set forth in those articles, which may be used as appropriately modified to meet the requirements of any given settlement hereunder.*]

In Witness Whereof, etc.

(End of Agreement)

8-805.4 *Settlement Agreement for Use in Settling Cost-Reimbursement Type Prime Contracts After Complete Termination.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19........ between the **UNITED STATES OF AMERICA** (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and ....

(i) a corporation organized and existing under the Laws of the State of ....;

(ii) a partnership consisting of ....;

(iii) an individual doing business as ....;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. .... under date of ...., 19 .... which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated .... the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

The term "*termination inventory*" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract which are properly allocable to the terminated portion of the contract, but shall not include any facilities, materials, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use of disposition thereof. Termination inventory may include Government-furnished property and contractor-acquired property as defined below.

(i) Government-furnished property is property in the possession of or acquired directly by the Government, and delivered or otherwise made available to the Contractor.

(ii) Contractor-acquired property is property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract, or exercises its contractual right to take title.

The term "*subcontract*" means any contract as defined in ASPR 1–201.4 other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

The term "*scrap*" means property that has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 2. a. The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (i) that all of his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts and (ii) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

b. The Contractor hereby transfers and conveys to the Government all the right, title and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (i) all such items are properly allocable to the terminated portion of the contract; (ii) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (iii) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (iv) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 5. a. The Contractor has received the sum of $................ on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

b. In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of an invoice or voucher, the sum of $ .... (*insert net amount of settlement*), arrived at by deducting from the sum of $................ [*insert gross amount of settlement less amount set forth in Article 5a above*], (1) the amount of $............... representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon) and (2) the amount of $........... representing all applicable property disposal credits [and (3) the amount of $........... representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].* (**To be inserted where appropriate.*) Said sum, together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ARTICLE 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

((*The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see 8-210.2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following rights which are not applicable and add any additional exceptions or reservations required.*)

(1) Claims by the Contractor against the Government, as to which his right of reimbursement is disputed, which are excluded without prejudice to the rights of either party as follows: [*Insert the amounts and describe the claims with respect to which findings have been made by the Contracting Officer disallowing the item and with respect to which the Contractor has taken, or intends to take, timely appeal.*]

(2) Claims by the Contractor against the Government which are unknown in amount and which involve costs claimed to be reimbursable under the contract, as follows: [*Insert the estimated amounts and describe the claims.*]

(3) Claims by the Contractor against the Government, whose existence is unknown, based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the contract.

(4) Claims by the Government against the Contractor which are based upon refunds, rebates, credits, or other amounts not now known to the Government, together with interest thereon, now due or which may become due the Contractor from third parties to the extent that such amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. Any such amounts which may hereafter become due to the Contractor from any third party or other source shall be paid to the Government within 30 days after receipt by the Contractor. Interest at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 STAT 97 for the Renegotiation Board, shall accrue and shall be paid to the Government on any such amounts as remain unpaid after the 30-day period.

(5) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19........ [*Insert reference to applicable Renegotiation Act.*]

(6) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, applications for patent and patents, including rights to assignments, invention reports, and licenses, and in covenants of indemnity against patent risks.

(7) All rights of the Government to take the benefit of agreements or judgments reducing or otherwise affecting royalties paid or payable in connection with the performance of the contract.

(8) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, covenants of indemnity.

(9) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(10) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(11) All rights and liabilities of the parties under the contract with respect to any and all Government property, furnished to or acquired by the Contractor for the performance of this contract.

(12) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(13) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive Orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, "officials not to benefit." [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive Orders, the suggested language should be appropriately modified.*]

In Witness Whereof, etc.

(End of Agreement)

8–805.5 *Reserved.*

8–805.6 *No Cost Settlement Agreement—Partial Termination.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19.........., between the **UNITED STATES OF AMERICA** (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and ....

(i) a corporation organized and existing under the Laws of the State of ....;
(ii) a partnership consisting of ....;
(iii) an individual doing business as ....;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. .... under date of ...., 19......... which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole or from time to time, in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

***WHEREAS,** by the Notice of Termination dated ...., 19 ...., the Government advised the Contractor of the partial termination of the contract for the convenience or at the option of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract";

**Omit when notice of termination has not been issued.*

and

WHEREAS, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: ((*Specify the terminated portion clearly as to items including* (*i*) *item numbers,* (*ii*) *descriptions,* (*iii*) *quantity terminated,* (*iv*) *unit price of items,* (*v*) *total price of terminated items, and* (*vi*) *any other explanation necessary to avoid uncertainty or misunderstanding.*)

ARTICLE 2. The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the contract or by reason of its termination including, without limitation, all obligation of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the contract; *provided*, however, that nothing herein contained shall impair or affect in any way any other covenants, terms or conditions of the contract. And *provided further* that, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved:

[*List reserved or excepted rights and liabilities: see 8–210.2 and Article 7 of the agreement set forth in 8–805.2.*]

In Witness Whereof, etc.

(End of Agreement)

8–805.7 *No Cost Settlement Agreement—Complete Termination.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19......... between the **UNITED STATES OF AMERICA** (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and ....

(i) a corporation organized and existing under the Laws of the State of ....;

(ii) a partnership consisting of ....;

(iii) an individual doing business as ....

(hereinafter called the "Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. .... under date of ...., 19....... which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

***WHEREAS,** by the Notice of Termination dated ...., 19—, the Government advised the Contractor of the termination of the contract for the convenience or at the option of the Government;

(**Omit when notice of termination has not been issued.*)

and

WHEREAS, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the contract and, except as set forth below, releases it from any and all obligations arising under the contract or by reason of its termination, and the Government agrees that all obligations arising under the contract or by reason of its termination, shall be deemed to be concluded; except as follows:

[*List reserved or excepted rights and liabilities; see 8–210.2 and Article 6 of the agreement set forth in 8–805.1.*]

In Witness Whereof, etc.

(End of Agreement)

8–805.8 *Settlement Agreement for Use in Settling Cost-Reimbursement Type Prime Contracts After Partial Termination.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19 – between the **UNITED STATES OF AMERICA** (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and ....

(i) a corporation organized and existing under the Laws of the State of ....;
(ii) a partnership consisting of ....;
(iii) an individual doing business as ....
(hereinafter called the "Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. .... under date of ...., 19— which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination clause of the contract provides that the performance of work under the contract may, at the convenience of the Government, be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated .... the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such Notice, to which reference is hereby made as to the part terminated, and said part is hereby referred to as "the terminated portion of the contract"; and

WHEREAS, it is the desire of the parties that an adjustment be made of the fee *(and of the estimated cost) under the contract as a result of such partial termination;

(**Insert if appropriate*)

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1. The contract is amended by deleting therefrom the terminated portion of the contract as follows: (specify the terminated portion clearly as to items, including (i) item numbers, (ii) descriptions, and (iii) quantity terminated).

***ARTICLE 2.** The estimated cost of the contract is decreased by $............

(**Insert if appropriate*)

ARTICLE 3. The fee stated in the contract is decreased by ($...........)

ARTICLE 4. The Contractor's allowable costs and earned fee, if any, for the terminated portion of the contract will continue to be reimbursed on Form 1034 cost vouchers in accordance with the applicable provisions of the contract and of Section XV of the Armed Services Procurement Regulation.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date above written.

(End of Agreement)

8–805.9 *Format for Settlement of Reservations.*

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this .... day of ...., 19— between the **UNITED STATES OF AMERICA** (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and ....

(i) a corporation organized and existing under the Laws of the State of ....;
(ii) a partnership consisting of ....;
(iii) an individual doing business as ....

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. .... under date of ...., 19......... which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the contract has been terminated; and

TERMINATION OF CONTRACTS

WHEREAS, a settlement agreement was executed in connection with the termination of the contract, said settlement agreement being dated ...., and being designated as Supplement No. .... to the contract; and

WHEREAS, said settlement agreement excepted from the settlement therein contained certain items as more fully described in said final settlement agreement including the item(s) described in Clause 1 of this Agreement; and

WHEREAS, the Government and the Contractor have agreed to a settlement of said item(s) described in Clause 1 of this Agreement;

NOW, THEREFORE, the parties hereto do mutually agree as follows:

CLAUSE 1. The Government agrees to pay to the Contractor the sum of $........... on account of the following item(s):

Item 1:

CLAUSE 2. The Contractor hereby releases and forever discharges the Government from all liability, and from all claims and demands which the Contractor now has or may hereafter have, under the contract insofar as it pertains to the contract, based upon the Item(s) described in Clause 1 of this Agreement.

In Witness Whereof, the parties hereto have executed this Agreement on the date first herein written.

(Type or print names under all signatures)
THE UNITED STATES OF AMERICA
BY...................(Contracting Officer)

(End of Agreement)

.................(Name of Contractor)
By ....
Contractor's Business Address:
....

(End of Agreement)

8-806 DD Form 1114—Instructions for Use of Contract Termination Settlement and Inventory Schedule Forms. See F-200.1114.

8-807 Format for the Release of Excess Funds Under Terminated Contracts.

FROM: Termination Contracting Officer located at ....
TO: Purchasing Office located at ....
SUBJ: Terminated Contract No. .... with ....
(Contractor)

Refs:

(a) (Cite Termination Notice and effective date)
(b) (Cite previous letters releasing excess funds, if any)*

1. By the referenced Termination Notice, the subject contract was (completely) (partially) terminated for the convenience of the Government.

2. On the basis of the best evidence available, it is estimated that the gross settlement costs will approximate $............ Therefore, the amount available for release as excess to the contract is $............ Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

3. The related appropriation(s) and amount(s) involved are:

APPROPRIATION(S)	ALLOCATED AMOUNT(S)
....	....
....	....

....*(Contracting Officer* and location)

Copies to:
Paying Office
Accounting and Finance Office
Other

*When prior letters releasing excess funds are cited, the following shall be used as the text of paragraph 2. The estimated settlement costs previously reported by reference (b) in the total amount of $............... is hereby revised. On the best evidence now available, it is estimated that the settlement costs will approximate $................ Therefore, the additional amount available for release is $................

8–808 Format for Termination Contracting Officer's Settlement Memorandum for Fixed-Price Type Contract Terminated for Convenience of the Government. This memorandum shall be addressed to a reviewing authority or the file in accordance with 8–211. Contractors and subcontractors should be encouraged to use this format appropriately modified to cover subcontract settlements submitted for review and approval.

PART I—GENERAL INFORMATION

1. *Identification.* (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. /Names and titles of both contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.*

a. Date of contract and contract number.

b. Type of contract (*e.g.*, fixed price, or fixed price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination provisions (cite ASPR designation or other special provisions).

3. *Termination Notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Statement whether contractor stopped work on effective termination date. If he did not, furnish details. Also state whether subcontracts were terminated promptly by the contractor.

e. Statement as to diversion of common items and return of goods to suppliers, if any.

f. Furnish information as to contract performance and timely deliveries on part of contractor.

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Basis of Claim.* State whether claim was filed on inventory, total cost or other basis. Explain approval granted in connection with submission on other than inventory basis.

3. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

PART III—TABULAR SUMMARY OF CONTRACTOR'S CLAIM

Prepare a summary substantially as follows:

(Where field recommendations are to be considered, expand the format to include such recommendations.)

TERMINATION OF CONTRACTS

		Auditor's Recommendation			
Item Claimed	*Contractor's Proposal*	*$ Accepted*	*Cost Questioned*	*Unresolved Items*	*TCO Negotiated Amount*
1. Contractor's Costs as set forth on Settlement Proposal. Metals, Raw materials, etc.					
Total					
2. Profit					
3. Settlement Expense					
4. Total					
5. Settlement with Subs					
6. Acceptable Finished Product					
7. Gross Total					
8. Disposal and Other Credits					
9. Net Settlement					
10. Partial, Progress & Advance Payments					
11. Net Payment Requested					

PART IV—DISCUSSION OF SETTLEMENT

1. *Contractor's Cost.*

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration with respect to each item.

b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included therein.

c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.

d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.

e. Comment on any unadjusted contractual changes which are included in the settlement.

f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.

g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.

2. *Profit.* Explain the basis and factors considered in arriving at a fair profit.

3. *Settlement Expenses.* Comment on and summarize those expenses not included in audit review.

4. *Subcontractor's Settlements.*

No. of Settlements ... Net Amount

Approved by Termination Contracting Officer ....
Concluded by contractor under delegation of authority.
No Cost Settlements ....

Total ....

5. *Partial Payments.* Furnish total amount of partial payments, if any.

8–808

6. *Progress or Advance Payments*. Furnish total of unliquidated amounts, if any.

7. *Claims of the Government Against the Contractor Included in Settlement Agreement Reservations*. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion thereof.

8. *Assignments*. List any assignments, giving name and address of assignee.

9. *Disposal Credits*. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.

10. *Plant Clearance*. State whether all plant clearance action has been complete and all inventory sold, retained or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearance. Consolidated closing plant clearance report is attached.

11. *Government Property*. State whether all Government property has been accounted for.

12. *Special Tooling*. If involved, furnish comment on disposition.

13. *Summary of Settlement*. Summarize the settlement in tabular form substantially as follows:

Tabular Summary for Complete or Partial Termination

	Amount Claimed	Allowed Amount
Prime Contractor's Charges (before disposal credits)	$	$
Plus: Subcontractor charges (after disposal credits)	_____	_____
Gross Settlement	$	$
Less: Disposal Credits—Prime	XXXXX	_____
Net Settlement	$_____	
Less: Prior Payment Credits (This Settlement)	_____	
Previous Partial Settlements	_____	
Other Credits or Deductions	_____	
Total		$_____
Net Payment		_____
Total Contract Price (Complete Termination)		$_____
CPIT (for partial termination)		
Less: Total Payments to date	_____	
Net Payment from this Settlement	_____	
Fund Reserved for Reservations	_____	
Final Contract Price (Terminated Portion for partial termination)		$_____
Reduction in Contract Price		_____

14. *Exclusions*. Describe any proposed reservation of rights to the Government or to the contractor.

PART V—RECOMMENDATION

1. *Recommendation*. Include statement as to the amount of the gross settlement and recommendation that it is fair and reasonable to the Government and the contractor.

2. *Signature*. The Contracting Officer will sign and date the memorandum.

(End of Memorandum)

8–809 Format for Termination Contracting Officer's Settlement Memorandum for Cost-Reimbursement Type Contracts. This memorandum shall be addressed to a reviewing authority or the file in accordance with 8–211. This format may be appropriately modified and used to cover subcontract settlements.

PART I—GENERAL INFORMATION

1. *Identification*. (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of contractor and Government personnel who participated in the negotiation.

2. *Description of Terminated Contract.*

a. Date of contract and contract number.

b. Type of contract.

c. General description of contract items.

d. State total contract cost and fee data if complete termination.

e. Furnish reference to the contract termination provisions (cite ASPR .... or other special provisions).

3. *Termination Notice.*

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial, items terminated, estimated costs and fee data applicable to items terminated).

c. State whether termination notice was amended, and if so, explain.

d. Explain scope of the settlement as to whether settlement concerns fee only or whether costs are also included.

PART II—CONTRACTOR'S SETTLEMENT PROPOSAL

1. *Date and Amount.* Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)

2. *Examination of Proposal.* State type of reviews made and by whom (audit, engineering, legal, or other).

PART III—TABULAR SUMMARY OF SETTLEMENT

1. *Summary.* Summarize the proposed settlement in tabular form substantially as shown in Attachments A and B. Partial settlements may be summarized on Attachment B.

2. *Comments.* Furnish comments in amplification of tabular summaries.

a. Summary of Final Settlement (see Attachment A).

(1) If the auditor's final report was not available for consideration, state the circumstances.

(2) Explain how the fixed fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in 8–406.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.

(5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.

(6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.

(7) Comment on an unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.

(8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.

(9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken thereon.

(10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.

(11) Show settlements with subcontractors by breakdown as follows:

	Number Settlements	Total Dollar Amount
Approved by Termination Contracting Officer —		
Concluded by contractor under delegation of authority.		
No Cost Settlements		
Total		

(12) The following summary will be followed where settlement includes costs and fixed fee in a complete termination.

Gross Settlement ------------------------------		$______
Less: Disposal credits --------------------		______
Net Settlement ------------------------------		______
Less: Prior Payments -----------	______	
Other credits or deductions ---	______	
Total -----------------------------------		______
Net Payment ------------------------------		$______
Total contract estimated cost plus fixed fee -----		______
Less: Net settlement ------------	______	
Estimated reserve for exclusions -------------	______	
Final contract price (Consisting of $______ for reimbursement of costs and $______ for adjusted fixed fee) -------	______	______
Reduction in contract price (credit) ----------		______

(13) *Plant Clearance*. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (DD Form 1636, Inventory Disposal Report).

(14) *Government Property*. State whether all Government property has been accounted for.

TERMINATION OF CONTRACTS

PART IV—RECOMMENDATION

1. *Recommendation.* Set forth the amount of the proposed negotiated settlement and make recommendation that the settlement is fair and reasonable to the Government and the contractor and as such should be approved.

2. *Signature.* The termination contracting officer and negotiator will sign and date the memorandum.

SUMMARY OF SETTLEMENT—COST TYPE CONTRACT*

Contract No. ______
Termination No. _____

		Amount Claimed	Amount Allowed
1. Previous Reimbursed Costs—Prime and Subs		$	$
2. Previous Unreimbursed Costs		______	______
3. Total Cost Settlement		$	$
4. Previous Fees Paid—Prime		$	$
5. Previous Fees Unpaid—Prime		______	______
6. Total Fee Settlement		$	$
7. Gross Settlement		______	______
		$______	$______
Less: Deductions not reflected in Items 1–7			
a. Disposal credits	$______		
b. Other charges against contractor arising from contract	$______		
8. Net Settlement			$
Less: Prior Payment Credits			______
9. Net Payment			$
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):			
Aggregate gross amount of previous setttlements			$______
Aggregate net amount of previous partial settlements			$______
Aggregate net payment provided in previous partial settlements			$______
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements			$______

---

* Use applicable portion for partial settlement.

ATTACHMENT A

UNREIMBURSED COSTS SUBMITTED ON DD FORM 547*

Costs	Amounts claimed by contractor's proposal	Auditor's Recommendation		TCO's Computation
		Cost Questioned	Unresolved Items	
1. Direct material				
2. Direct labor				
3. Indirect factory expense				
4. Dies, jigs, fixtures and special tools.				
5. Other costs				
6. General and administrative expense.				
7. Fee				
8. Settlement expense				
9. Settlements with subs				
10. Total costs (Items 1–9)				

*Expand the format to include recommendations of technical personnel as required.

ATTACHMENT B

(End of Memorandum)

8–810 Format for Application for Grant of Authorization.

APPLICATION FOR GRANT OF AUTHORIZATION

(a) Name of contractor.

(b) Address of the principal office of the contractor.

(c) Name and location of divisions of the applicant's plant for which authorization requested.

(d) An explanation of the necessity and justification for the authorization requested.

(e) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling claims.

(f) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government contracting agencies and the percentage thereof applicable to each Department.

(g) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage thereof applicable to each Department.

(h) The extent of the applicant's experience in termination matters, including the handling of claims of subcontractors.

(i) The approximate amount and general nature of termination of the applicant currently in process.

(j) A statement that no other such application has been made for any division of the applicant's plant covered by the application; or, if one has been made, a full statement of the facts.

(k) The limits of authorization requested.

8–810.1 *Format of Letter of Authorization.*

LETTER OF AUTHORIZATION

(a) In consideration of your written request of (Date) and pursuant to paragraph 8–209.4 of the Armed Services Procurement Regulation (ASPR), you are authorized, subject to the limitations of ASPR and those stated below, to settle, without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of a Department of Defense contract being modified or terminated for the convenience of the Government, or subcontracts or purchase orders which have been terminated under any other circumstances that may require the Government to bear the cost of their settlement. This authorization does not extend to the disposition of Government-furnished material and completed articles not delivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government; except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed $............... (insert limit of authorization being granted).

(b) This authorization is subject to the following conditions and requirements:

(i) The amount of such subcontract termination settlement does not exceed $............... (insert limit of authorization being granted), computed as follows:

(A) credits for retention or other disposal of termination inventory allocated to the claim, and for advance or partial payments, shall not be deducted from the gross claim or settlement; but

(B) amounts payable for completed articles or work at the contract price, or for the settlement or discharge of termination claims of subcontractors (except those settlements which have not been approved by the Government), shall be deducted.

(ii) Any termination inventory involved has been disposed of in accordance with the Armed Services Procurement Regulation, except that screening and Government approval of scrap and salvage determinations are not required.

(iii) The contracting officer may incorporate specific instructions in each Notice of Termination as to the disposition of specific items of termination inventory, or the contracting officer may, at any time prior to final settlement, issue such specific instructions. No such instructions, however, will affect any disposal action taken by you or your subcontractors prior to receipt thereof.

(iv) The settlements made by you with your subcontractors and suppliers pursuant to the authorization granted herein, including sales, retention, or other dispositions of property involved in making such settlements, shall thereupon be reimbursable in accordance with the Armed Services Procurement Regulation, Section VIII, and the termination clause of the contract, and will not require approval of the contracting officer or his authorized representative.

(v) Any number of separate settlements of $............... (insert limit of authorization granted) or less may be made with a single subcontractor. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and must not be divided in such a way as to bring them within the authorization.

(vi) The authorization to make settlements provided for herein is not to be exercised in the case of a subcontractor or supplier who is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or there is any common interest between you by reason of stock ownership, or otherwise, which is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

(vii) A representative of this office will, from time to time, review your methods used in negotiating settlements with your subcontractors and make a selective examination of such settlements made by you. Where such a review indicates that you are not adequately protecting the Government's interest, this delegation will be revoked.

(End of Letter)

8-811 Delinquency Notices. The following are formats of delinquency notices which may be used to satisfy the requirements of 8-602.3. All notices will be sent with proof of delivery requested.

TERMINATION OF CONTRACTS

CURE NOTICE*

You are notified that the Government considers your (specify the Contractor's failure or failures), a condition that is endangering performance of the contract in accordance with its terms. Therefore, unless such condition is cured within ten (10) days after receipt hereof (or such longer time as the Contracting Officer may deem reasonably necessary) the Government may terminate subject contract for default under General Provision No. .... (Default).

(End of Notice)

**Use only when the delivery schedule has not expired.*

The "Cure Notice" is required by the terms of the Default clause in the contract and derives its authority therefrom. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contractually established delivery schedule or any extension thereof. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of ten (10) days or more, the "Cure Notice" should not be issued and the following "Show Cause Notice" may be used, if desired, immediately upon the expiration of the delivery period.

SHOW CAUSE NOTICE *

Since you have failed to (perform Contract No. .... within the time required by the terms thereof) (cure the conditions endangering performance under Contract No. .... as described to you in the Government's letter of ....(date)........), the Government is considering terminating said contract pursuant to General Provision No. .... (Default). Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose out of causes beyond your control and without fault or negligence on your part. Accordingly, you are hereby afforded the opportunity to present, in writing, any facts bearing on the question to Commander (insert complete address, including symbol, of activity where Procuring Contracting Officer is located), with copy thereof to the undersigned for information within ten (10) days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government under General Provision No. .... (Default) and the liabilities that may be invoked in the event a decision is made to terminate for default of the Contractor.

Any assistance rendered to you on this contract or acceptance by the Government of delinquent goods or services hereunder, will be solely for the purpose of mitigating damages, and is not to be construed as an intention on the part of the Government to condone any delinquency, or as a waiver of any rights the Government may have under subject contract.**

(End of Notice)

*Delivery schedule in part or in whole has expired.

**Stop work instructions may be used when it is definitely known that there are no further requirements for the items or services, but an investigation must be conducted to determine whether an actionable default exists in lieu of termination for convenience. In such a situation, the following may be inserted as the final paragraph of the Show Cause Notice: *Pending decision you are instructed to stop all work immediately and to make no further commitments under subject contract. Advise all subcontractors and suppliers to do likewise.*

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SECTION IX

PATENTS, DATA, AND COPYRIGHTS

9–000 Scope of Section. This Section sets forth policies, instructions, and contract clauses pertaining to patents, data, and copyrights in connection with the procurement of supplies and services.

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PATENTS, DATA, AND COPYRIGHTS

Part 1—Patents

9-100 Scope of Part. This Part prescribes contract clauses and instructions which define and implement the policy of the Department of Defense with respect to—

(i) inventions made in the course of experimental, developmental, or research work performed under Government contracts;

(ii) patent infringement liability resulting from work performed by or for the Government;

(iii) royalties payable in connection with the performance of Government contracts;

(iv) security requirements covering patent applications containing classified subject matter filed by contractors.

9-101 Reserved.

9-102 Authorization and Consent.

(a) Under 28 U.S.C. 1498, any suit for infringement of a United States patent based on the manufacture or use by or for the United States of an invention described in and covered by a patent of the United States by a contractor or by a subcontractor (including lower-tier subcontractors) can be maintained only against the Government in the Court of Claims, and not against the contractor or subcontractor, in those cases where the Government has authorized or consented to the manufacture or use of the patented invention. Accordingly, to insure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, authorization and consent shall be given as herein provided. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) Any provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement shall not be included in a contract.

(c) An authorization and consent clause shall not be used in contracts where both complete performance and delivery are to be outside the United States, its possessions, or Puerto Rico.

9-102.1 *Authorization and Consent in Contracts for Supplies or Services.* The contract clause in 7-103.22 shall be included in all contracts for supplies or services (including construction or architect-engineering work, see 18-902.1) except:

(i) when prohibited by 9-102(c); or

(ii) in contracts for experimental, developmental, or research work in which the clause in 7-302.21 is required.

9-102.2 *Authorization and Consent in Contracts for Research or Development.* Greater latitude in the use of patented inventions may be necessary in a contract for experimental, developmental, or research work than in a contract for supplies.

Unless prohibited by 9-102(c), the clause in 7-302.21 shall be included in all contracts calling exclusively for experimental, developmental, or research work, and may be included in contracts calling for both supplies and experimental, developmental, or research work where the latter work is a primary purpose of the contract. In all other contracts for both supplies and experimental, developmental, or research work, the Authorization and Consent clause in 7-103.22 shall be used. If the clause in 7-302.21 is included in a contract, the clause in 7-103.22 shall not be included.

9-103 Patent Indemnification of Government by Contractor. In order that the Government may be reimbursed for liability for patent infringement arising out of or resulting from the performance of construction contracts or contracts for supplies which normally are or have been sold or offered for sale to the public in the commercial open market or which are the same as such supplies with a relatively minor modification thereof a clause providing for indemnification of the Government is to be included in such contracts in accordance with the instructions set forth below. A patent indemnity clause shall not be used in contracts:

(i) when the Authorization and Consent clause in 7-302.21 applicable to research and development contracts is authorized, except that in contracts calling also for supplies of the kind described above, a patent indemnity clause may be used with respect to such supplies;

(ii) when the contract is for supplies which clearly are not or have not been sold or offered for sale to the public in the commercial open market. However, even in the foregoing instance, a patent indemnity clause may be included where (A) in the case of contracts to be awarded by formal advertising it is desired to obtain an indemnity as to specific components or spare parts so sold or offered for sale, in which case the clause shall be modified pursuant to 9-103.1(b); or (B) in the case of contracts to be awarded either by formal advertising or negotiation, a patent owner contends that the prospective procurement would infringe his patent and the low bidder or offeror is willing to indemnify the Government as to such patent either (1) without increase in price on the basis that the patent is invalid or not infringed, or (2) for other good reasons;

(iii) when both performance and delivery are to be outside the United States, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its possessions, or Puerto Rico, in which case the instructions of 9-103.1 or 9-103.3 are applicable; or

(iv) when the contract is for an amount of $10,000 or less, except that, as a matter of administrative convenience, the clause need not be deleted where it is a part of a standard form being used for contracts of $10,000 or less, since it is self-deleting as to such contracts.

9-103.1 *Patent Indemnification in Formally Advertised Contracts—Commercial Status Predetermined.*

(a) Except as prohibited by 9-103, the clause in 7-104.5 is appropriate in formally advertised construction contracts and shall be included in formally advertised contracts for supplies when it has been determined in advance of issuing the invitation for bids that supplies (or such supplies apart from relatively minor modifications to be made thereto) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market.

(b) When a supply contract calls in part for specific components or spare parts which normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, or such items with relatively minor modifications, the Patent Indemnity clause in 7-104.5 shall be modified by adding to the end of the clause either of the sentences in 7-104.5(a).

9-103.2 *Reserved.*

9-103.3 *Patent Indemnification in Negotiated Contracts.* A patent indemnity clause is not required to be included in negotiated contracts, but may be included (i) in negotiated construction contracts, (ii) as authorized in 9-103(ii)(B), and (iii) in negotiated contracts for supplies where such supplies normally are or have been sold or offered for sale to the public in the commercial open market, or are such supplies with relatively minor modifications made thereto. Ordinarily, the contracting officer, in consultation with the contractor, should be able to determine whether the supplies being purchased normally are on sale or have been sold or offered for sale to the public in the commercial open market.

(a) Subject to the foregoing and to the prohibitions in 9-103, the clause in 7-104.5 is approved for use in negotiated contracts for construction work or supplies.

(b) When a supply contract calls in part for specific components or spare parts which normally are or have been sold or offered for sale to the public in the commercial open market, or such items with relatively minor modifications, the Patent Indemnity clause in 7-104.5 shall be modified by adding to the end of the clause either of the sentences in 7-104.5(a).

9-103.4 *Waiver of Indemnity by the Government.* If it is desired to exempt one or more specified United States patents from the patent indemnity clause in 7-104.5, authority shall first be obtained from the Secretary or his designee, and the clause in 7-104.5(b) shall be included in the contract, in addition to the patent indemnity clause.

9-104 Notice and Assistance. The Government should be notified by the contractor of all claims of infringement in connection with the performance of a Government contract which come to the contractor's attention. The contractor should also assist the Government, to the extent of evidence and information in the possession of the contractor, in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the performance of the contract. Accordingly, the clause in 7-103.23 shall be included in all contracts in excess of $10,000 for supplies, services, construction, or experimental, developmental, or research work; *provided*, that the clause shall not be included in contracts when both performance and delivery are to be outside the United States, its possessions, or Puerto Rico, unless the contract indicates that the supplies are ultimately to be shipped into the United States, its possessions, or Puerto Rico. For proper action to be taken by the contracting officer with respect to reports of notices or claims of patent infringement received by him under the provisions of this paragraph 9-104, see Part 4 of this Section.

9-105 Reserved.

9-106 Classified Contracts. Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792 *et seq.* (Espionage and Censorship) and related statutes and may be contrary to the interests of national security. Accordingly, except as otherwise provided in 9-106.2, the clause in 7-104.6 shall be included in every classified contract (see 1-201.34 and 1-320).

9-106.1 *Patent Applications.*

(a) Upon receipt from the contractor of a patent application, not yet filed, which has been submitted by the contractor in compliance with paragraphs (a) or (b) of the clause in 7-104.6, the contracting officer shall ascertain the proper security classification of the patent application. Upon a determination that the application contains classified material, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the United States Patent Office in accordance with procedures in the Department of Defense Industrial Security Manual for Safeguarding Classified Security Information. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days pursuant to paragraph (a) of the clause.

(b) In the case of all applications filed under the provisions of this paragraph, the contracting officer, upon receiving the application serial number, the filing date, and the information furnished by the contractor under paragraph (d) of the clause in 7-104.6, shall promptly submit that information to personnel having cognizance of patent matters in order that necessary steps may be taken to ensure the security of the application.

(c) A request for the approval referred to in paragraph (c) of the clause in 7-104.6 must be considered and acted upon promptly in order to avoid the loss of valuable patent rights of the Government or the contractor.

9-106.2 *Classified Contracts Relating to Atomic Energy.* When the contract contains a patents rights clause which includes the paragraph in 7-302.23(e), the instructions contained in such paragraph shall be followed in processing information regarding any Subject Invention (Classified or Unclassified), relating to the production or utilization of special nuclear material or atomic energy.

9-107 Patent Rights Under Contracts Involving Research and Development. This paragraph sets forth policies and procedures, and prescribes contract clauses with respect to inventions made in the course of or under a contract or subcontract entered into with or for the benefit of the Government where a purpose is the conduct of experimental, developmental, or research work. The policies, procedures, and contract clauses may also be used in grants, agreements, and other arrangements as deemed appropriate by the contracting officer.

9-107.1 *General.*

(a) *Introduction.* On August 23, 1971, the President issued a Statement of Government Patent Policy (36 Fed. Reg. 16887, August 26, 1971) applicable to all executive departments and agencies, revising a prior Statement of Policy (28 Fed. Reg. 10943, October 12, 1963). Essentially, the goals of this Statement are to provide criteria for determining the allocation of rights in inventions resulting from federally-sponsored research and development contracts, to promote their expeditious development so that the public can benefit from early civilian use of the inventions and to assure their continued availability. In applying this regulation, both the need for incentives to draw forth private initiatives and the need to promote healthy competition in industry must be weighed.

(b) *Applicable Statutes*. Except to the extent that the Department of Defense may be governed by specific statutes or by any treaty or agreement between the United States and any foreign country, inconsistent with this paragraph 9-107, the provisions of this paragraph 9-107, including the use of the prescribed clauses shall be followed.

(c) *Co-sponsored, Cost Sharing or Joint Venture Research*. The provisions of this paragraph 9-107 are not mandatorily applicable to co-sponsored, cost sharing or joint venture research when it is determined that in the course of the work under the contract, the contractor will be required to make a substantial contribution of funds, facilities, or equipment to the principal purpose of the contract.

9-107.2 *Policy*.

(a) The Government shall normally acquire or reserve the right to acquire the principal or exclusive rights throughout the world in and to any inventions made in the course of or under a contract when:

- (i) a principal purpose of the contract is to create, develop, or improve products, processes, or methods which are intended for commercial use (or which are otherwise intended to be made available for use) by the general public at home or abroad, or which will be required for such use by governmental regulations; or
- (ii) a principal purpose of the contract is for exploration into fields which directly concern the public health, public safety, or public welfare; or
- (iii) the contract is in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, and the retention of exclusive rights at the time of contracting might confer on the contractor a preferred or dominant position; or
- (iv) the services of the contractor are:
  - (A) for the operation of a Government-owned research or production facility; or
  - (B) for coordinating and directing the work of others.

In exceptional circumstances the contractor may retain greater rights than a nonexclusive license at the time of contracting when the Secretary or his designee determines that such action will best serve the public interest. Greater rights may also be retained by the contractor after the invention has been identified when it is determined that the retention of such greater rights is consistent with the intent of this paragraph (a) and is either a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application or that the Government's contribution to the invention is small compared to that of the contractor. When an identified invention made in the course of or under the contract is not directly related to a principal purpose of the contract, greater rights may also be retained by the contractor under the criteria of (c) below.

(b) In other situations, where the purpose of the contract is to build upon existing knowledge or technology to develop information, products, processes, or methods for use by the Government, and the work called for by the contract is in a field of technology in which the contractor has acquired technical competence (demonstrated by factors such as know-how, experience, and patent position) directly related to an area in which the contractor has an established nongovernmental commercial position, the contractor shall normally retain the principal or exclusive rights throughout the world in and to any resulting inventions.

(c) When the commercial interests of the contractor are not sufficiently established to be covered by the criteria specified in (b) above, the allocation of rights shall be made by the contracting officer after the invention has been identified, in a manner deemed most likely to serve the public interest as expressed in this policy, taking particularly into account the intentions of the contractor to bring the invention to a point of commercial application and the guidelines of (a) above. However, the Secretary or his designee may prescribe by regulation, special situations where the public interest in the availability of the inventions would best be served by permitting the contractor to retain at the time of contracting greater rights than a nonexclusive license.

(d) In the situations specified in (b) and (c) above, when two or more potential contractors are judged to have presented proposals of equivalent merit, willingness to grant the Government principal or exclusive rights in resulting inventions, will be an additional factor in the evaluation of the proposals.

(e) When the principal or exclusive rights in an invention remain in the contractor, he should agree to provide written reports at reasonable intervals, when requested by the Government, on the commercial use that is being made or is intended to be made of inventions made under Government contracts.

(f) When the principal or exclusive rights in an invention remain in the contractor, unless the contractor, his licensee, or his assignee has taken effective steps within 3 years after a patent issues on the invention to bring the invention to the point of practical application or has made the invention available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why he should retain the principal or exclusive rights for a further period of time, the Government shall have the right to require the granting of a nonexclusive or exclusive license to a responsible applicant(s) on terms that are reasonable under the circumstances.

(g) When the principal or exclusive rights to an invention are retained by the contractor, the Government shall have the right to require the granting of a nonexclusive or exclusive license to a responsible applicant(s) on terms that are reasonable in the circumstances (i) to the extent that the invention is required for public use by governmental regulations, or (ii) as may be necessary to fulfill health or safety needs, or (iii) for other public purposes stipulated in the contract.

(h) When the principal or exclusive rights in an invention remain in the contractor, the Government shall normally acquire:

(i) at least a nonexclusive, nontransferable, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government of the United States (including any Government agency) and States and domestic municipal governments, unless the

Secretary or his designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments; and

(ii) the right to sublicense any foreign government pursuant to any existing or future treaty or agreement if the Secretary or his designee determines it would be in the national interest to acquire the right; and

(iii) the principal or exclusive rights to the invention in any country in which the contractor does not elect to secure a patent.

(i) When the principal or exclusive rights in an invention are acquired by the Government, there normally will be reserved to the contractor a revocable, nonexclusive, royalty free license for the practice of the invention throughout the world, the right to revoke such license being reserved in order to grant an exclusive license when it is determined that some degree of exclusivity may be necessary to encourage further development and commercialization of the invention. When the Government has a right to acquire the principal or exclusive rights to an invention and does not elect to secure a patent in a foreign country, the contractor may be permitted to retain such rights in any foreign country in which he elects to secure a patent, subject to the Government's rights set forth in (h) above.

(j) Nothing herein shall be construed to confer immunity upon any person from the antitrust laws or from a charge of patent misuse, and no person shall be immune from the operation of State or Federal law by reason of the retention and use of rights set forth herein.

9-107.3 *Procedures.*

(a) *Selection of Patent Rights Clause.*

(1) When a contract which is to be performed in the United States, its possessions, Puerto Rico, or the District of Columbia has as a purpose the conduct of experimental, developmental, or research work, the contracting officer, after consultation with cognizant legal, patent and technical advisors, shall apply the policy in 9-107.2 to the contracting situation and shall include in the contract a patent rights clause from 7-302.23(a), (b) or (c) or 7-302.23(h) or (i). The clauses in 7-302.23(a), (b) and (c) shall be used in contracts with industrial concerns, in contracts with nonprofit organizations (see 13-101.13) calling for developmental work, and, normally, in contracts calling for basic or applied research with nonprofit organizations. However, the clauses in 7-302.23(h) and (i) may be used in contracts calling for basic or applied research with nonprofit organizations when the Government's interest in inventions will not be impaired. The clauses in 7-302.23(a), (b) and (c) essentially differ from those in 7-302.23(h) and (i) in that the former include the following provisions which are not included in the latter: *forfeiture of rights in unreported inventions; examination of records relating to inventions, withholding of payment;* and *subcontracts.* The clauses in 7-302.23(h) and (i) are not appropriate for use in situations where the Secretary or his designee determines that a contractor is entitled to retention of greater rights upon a finding that "exceptional circumstances," as provided for in 9-107.2(a) are present. In this situation, an appropriate clause in 7-302.23(a), (b) or (c), suitably modified, shall be used. The *Pre-Solicitation Patent Rights*

Documentation Checklist set forth in 9-107.3(b) normally will be completed by cognizant technical personnel to enable the contracting officer to determine the appropriate clause(s) to be incorporated in solicitations for such work. If either of the clauses in 7-302.23(a) or 7-302.23(h) is determined to be applicable, that clause alone shall be used in the solicitation. If these clauses are determined to be inapplicable, both of the clauses in 7-302.23(b) and 7-302.23(c) or the clauses in 7-302.23(b) and 7-302.23(i) shall be included in the solicitation together with the statement: "The Contracting Officer will determine during negotiation, in accordance with the guidelines of ASPR 9-107.3, which of these two clauses will be included in the contract." Except when the clause in 7-302.23(a) or 7-302.23(h) is determined to be applicable, DD Form 1564, "*Pre-Award Patent Rights Documentation*" normally will be included in each solicitation. In an unsolicited proposal situation, the proposer may be requested to complete DD Form 1564. The checklist and the form, if used, shall be made a part of the contract file (9-107.3(b)). When a determination to include the clause of 7-302.23(a) or 7-302.23(h) is based solely on the criterion of 9-107.2(a)(iii), a notice to that effect will be included in the solicitation, and the solicitation shall provide offerors with an opportunity to show that the selected clause proposed for a contract is inappropriate for the particular procurement situation. The contracting officer shall review the offeror's showing and if the contracting officer is not persuaded by the showing, he shall inform the offeror, in writing, of his conclusions and the reasons therefor. If the contracting officer and the offeror cannot then resolve the issue, the contracting officer will promptly forward the matter to the Chief of the Purchasing Office for resolution. If the award of the contract cannot be delayed, the contracting officer may proceed with the procurement pending resolution of the issue *provided* the clause of 7-302.23(a) or 7-302.23(h), as appropriate, is included in the contract accompanied by the statement: "Contractor agrees to accept the Patent Rights clause which is ultimately determined by the Chief of the Purchasing Office to be appropriate." This procedure is inapplicable to the "exceptional circumstances" situation of 9-107.2(a). In implementing 9-107.2(d), contractors in no event will be asked to state their willingness to grant the Government principal or exclusive patent rights prior to a determination that proposals of equivalent merit have been presented.

(2) The Patent Rights clause in 7-302.23(a) shall be used, except when the clause in 7-302.23(h) is used pursuant to 9-107.3(a)(1), if it is determined that the experimental, developmental or research work to be performed under the contract falls within 9-107.2(a). This clause provides that the Government shall acquire title, under certain circumstances, to inventions made in the course of or under the contract, subject to the reservation of nonexclusive license rights to the contractor. For the contract work to be determined as falling within 9-107.2(a)(ii), a principal purpose of the contract must be directly concerned with the public health, public welfare or public safety (*e.g.*, drugs, medical instruments, water desalinization, environmental protection and weather modification.) The determination should not be influenced by the sole military application of such work. For the contract work to be determined as falling within 9-107.2(a)(iii), the contract must be for an end item in a field of science or technology in which there is little or no significant experience outside of work

funded by the Government at the time the contract is entered into, or when at such time the Government has been the principal developer. For the contract work to be determined as falling within 9-107.2(a)(iv)(A), the contract must call for experimental, developmental or research work at the Government-owned facility. The expression "coordinating and directing the work of others" in 9-107.2(a)(iv)(B) does not refer to the normal prime contractor-subcontractor relationship, but instead refers to a relationship which may give rise to a potential organizational conflict-of-interest (see 1-113.2). The contractor may retain greater rights than a nonexclusive license after an invention has been identified if the contracting officer determines that the criteria of 9-109.6(c) are met. When the Secretary or his designee determines that exceptional circumstances exist as provided for in 9-107.2(a), paragraphs (b) and (i) of the clause prescribed in 7-302.23(a) may be appropriately modified so that the contractor retains greater rights than a nonexclusive license to all or specific inventions.

(3) The Patent Rights clause in 7-302.23(b) shall be used when it is determined that the experimental, developmental or research work to be performed under the contract does not come within 9-107.2(a) but is within 9-107.2(b). This clause provides that title to any inventions resulting from the contract remains in the contractor, subject to the acquisition of certain specified rights by the Government. In determining whether the contract falls within 9-107.2(b), the contracting officer shall first determine whether the work to be performed under the contract is in a field of technology directly related to an area in which the contractor has an established nongovernmental commercial position. In this determination, the phrase "field of technology" plays a significant role and should be interpreted in the light of the broad engineering principles and techniques involved in the research and/or development work to be performed under the contract rather than the nature of the end product or its intended governmental application. In determining whether the prospective contractor has an established nongovernmental commercial position, any of the following activities of the contractor directly related to a field of technology involved in the procurement can be considered as qualifying:

(i) regular engagement as a manufacturer or source of products or services to the general domestic public, or to foreign governments, nationals or businesses, or to multi-national organizations; or

(ii) development within the immediate past five years of non-governmental markets for inventions; or

(iii) an effective program for the transfer of technology as by the licensing of inventions.

(4) The Patent Rights clause in 7-302.23(c) shall be used, except when the clause in 7-302.23(i) is used pursuant to 9-107.3(a)(1), when it is determined that the experimental, developmental or research work to be performed under the contract does not come within 9-107.2(a) or (b), but is within 9-107.2(c). The clause in 7-302.23(c) provides that the allocation of rights in inventions resulting from the contract shall be deferred until after an invention has been identified in accordance with the criteria of 9-109.6(d).

(5) In the special cases covered by the paragraphs below, the contracting officer shall follow the instructions and include the clauses required in such paragraphs:

(i) 9-107.6, concerning foreign contracts;
(ii) 9-107.7, concerning contracts relating to atomic energy;
(iii) 9-107.8, concerning contracts placed for other Government agencies;
(iv) 9-107.9, concerning contracts relating to space; or
(v) 9-108, concerning personal services contracts.

(b) *Pre-Solicitation Patent Rights Documentation Checklist.*

(Authorized for local reproduction)

PRE-SOLICITATION PATENT RIGHTS DOCUMENTATION CHECKLIST

Procurement Identification: ....

Purpose of Proposed Procurement: ....

1. Is a principal purpose of the proposed contract, either by itself or as one of a series of directly related contracts, to create, develop or improve an end item intended for use by the general public?*
(See ASPR 9-107.2(a)(i))
(Yes)........ (No)........
If "Yes," identify the end item and briefly describe its intended use by the general public.

....

2. Is a principal purpose of the proposed contract, either by itself, or as one of a series of directly related contracts to create, develop or improve an end item which is intended for use by the general public or will be required for such use by a Government regulation?
(Yes)........ (No)........
If "Yes," identify the end item and cite applicable regulation.
(See ASPR 9-107.2(a)(i))

....

3. Is a principal purpose of the contract exploration into a field directly concerned with public health, public safety, or public welfare (as distinguished from items predominantly of military concern)?
(See ASPR 9-107.2(a)(ii))
(Yes)........ (No)........
If "Yes," identify such principal purpose of the contract and briefly describe its relationship to the public health, public safety, or public welfare.

....

4. Is the contract for procurement in a field of science or technology in which there has been little significant experience outside of work funded by the Government?**
(See ASPR 9-107.2(a)(iii))
(Yes)........ (No)........
If "Yes," briefly describe such field.

....

5. Is the contract for procurement in a field of science or technology
in which the Government has been the principal developer of the field?**
(See ASPR 9-107.2(a)(iii))
(Yes)........ (No)........
If "Yes," briefly describe such field.

....

6. If the answer to either 4 or 5 is "Yes," would the contractor be likely to get a preferred or dominant commercial position in that field if he were permitted to retain title to inventions made under the contract?
(See ASPR 9-107.2(a)(iii))
(Yes)........ (No)—
Explain the answer. ....

7. Does the contract require that the contractor both (i) provide service for operation of a Government-owned research or production facility and (ii) perform experimental, developmental or research work at that facility?
(See ASPR 9-107.2(a)(iv)(A))
(Yes)....... (No).......

....

8. Does the contract require the contractor to coordinate and direct the work of others (as distinguished from the normal contractor-subcontractor relationship) which might result in a potential organizational conflict of interest?
(See ASPR 1-113.2; Appendix G; and 9-107.2(a)(iv)(B))
(Yes)........ (No).......
If "Yes," explain briefly why such a potential conflict of interest is considered to exist.

....

....
(Typed Name, Office and Signature
of Person Completing This Form)

....

The Patent Rights (Acquisition by the Government) clause, ASPR 7-302.23(a) or 7-302.23(h), will....... / will not....... be used in the solicitation.
(Give reasons for determination.)

....
(Typed Name and Signature of
Contracting Officer or Representative)

---

*The contract or series of contracts need not necessarily require delivery of the end item. The end item may be a product, a process or data.

**The mere fact that the Government has been or is the principal funder or developer of a specific piece of hardware does not necessarily make the Government the principal funder or developer in a field of science or technology which encompasses the piece of hardware.

(c) *Record of Decisions.* The Presidential Statement on Government Patent Policy states that "The Federal Council for Science and Technology shall continue to ..... acquire data from the Government agencies on the disposition of patent rights to inventions resulting from Federally-financed research and development and on the use and practice of such inventions to serve as bases for policy review and development." The Presidential Statement also states that "Each agency shall record the basis for its actions with respect to inventions and appropriate contracts under this statement." Accordingly, procuring activities shall record and maintain in a readily available manner the bases for each of the following actions: (i) selection of a Patent Rights clause under 9-107.3(a), including the Pre-solicitation Patent Rights Documentation Checklist and the DD Form 1564, if used; (ii) finding of exceptional circumstances under 9-107.2(a); (iii) retention of greater rights determinations pursuant to 9-109.6; and (iv) determinations under 9-107.3(d) and (e). Contractors shall not be required to record and maintain the bases for such actions.

9-107.3

(d) *License for Government, States and Municipal Governments.* The policy set forth in 9-107.2(h)(i) provides that the Government shall normally acquire a paid-up license in any invention resulting from the contract for the Government, States and municipal government. Paragraph (c)(i) of the Patent Rights clauses in 7-302.23(a), (b) and (c) sets forth such a license. When the Secretary determines pursuant to 9-107.2(h)(i) that it would not be in the public interest in a particular contracting situation to acquire a license for the Government of the scope in paragraph (c)(i), this paragraph may be appropriately modified.

(e) *Right to Sublicense Foreign Governments.* Paragraph (c) of the Patent Rights clauses in 7-302.23(a), (b) and (c) does not provide the Government with inventions resulting from the contract, to any foreign government pursuant to any treaty or agreement. However, where the acquisition of patent rights for the benefit of any foreign government is required under a treaty or executive agreement, paragraph (c) of the selected clause may be appropriately modified to the extent necessary for compliance therewith under the authority of 1-109.4.

(f) *Minimum Rights to Contractor.* The minimum rights which normally may be retained by a contractor in any invention made by the contractor in the course of or under a contract upon which a patent application has been filed is a revocable, nonexclusive, royalty free license as specified in the patent rights clause.

(g) *Subcontracts.*

(1) The policy expressed in 9-107.2 is applicable to all contract levels. Hence, a contractor awarding a subcontract and a subcontractor awarding a lower-tier subcontract, which has as a purpose the conduct of experimental, developmental or research work generally shall determine the ASPR patent rights clause to be included therein which is consistent with the expressed policy. When conditions require, the contracting officer may direct a contractor to include a particular patent rights clause in any subcontract.

(2) Contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in the inventions resulting from subcontracts.

(h) *Publication of Invention Disclosures.* The Patent Rights clauses of 7-302.23(a), (b), (c), (h) and (i) specify that the Government may duplicate and disclose disclosures of Subject Inventions, and all other reports and papers required to be furnished under the clauses. However, the public disclosure of information in such documents before the first-filed application (whether domestic or foreign) may create a bar to the patenting of the invention in foreign countries. Accordingly, to protect the mutual interests of the Government and its contractors in obtaining foreign patents on Subject Inventions, the Government and contractors should cooperate in deferring publication of such documents when practical until the filing of the first application and use their best efforts toward prompt filing when publication is imminent.

(i) *Deviations.* Any departures from the policy, procedures, and prescribed clauses of this paragraph 9-107, shall be subject to the provisions of 1-109.

9-107.4 *Reserved.*

9-107.5 *Reserved.*

9–107.6 *Clause for Foreign Contracts.* A patent rights clause shall be included in every contract having as a purpose the conduct of experimental, developmental or research work which is to be performed outside the United States, its possessions, or Puerto Rico. Except as provided in 9–107.7 and 9–107.8, the clauses authorized in accordance with 9–107.2 and 9–107.3 may be used or replaced by any other clause tailored to meet requirements peculiar to foreign procurement *provided* the replacement clause incorporates the principles of the clause being replaced.

9–107.7 *Contracts Relating to Atomic Energy.* In all research and development contracts relating to the production or utilization of special nuclear material or atomic energy, the paragraph in 7–302.23(e) shall be added as a final paragraph to the applicable patent rights clause of 7–302.23(a), (b) or (c) included in such contracts.

9–107.8 *Contracts Placed for Other Government Agencies.*

(a) *Patent Rights Clause.*

(1) Other Government agencies may from time to time request the Departments to place contracts on behalf of the agencies. Such requests will state whether or not an agency clause providing for property rights in inventions is required, and the request should have attached thereto the appropriate clause desired by the agency. If such clause is not furnished by the agency, it must be obtained from the agency and be included in the contract. The following rules amplify the use of patent rights clauses in such contracts.

a. If the request states that an agency clause is required in any resulting contract and the work to be performed under the contract is not severable and is funded wholly or in part by the agency, then the agency clause and no other patent rights clause shall be included in the contract.

b. If the request states that an agency clause is required in any resulting contract and the work to be performed under the contract is severable and is only in part for the agency, then the work which is on behalf of the agency shall be identified in the contract and the agency clause shall be made applicable thereto. That portion of the work for a Department shall likewise be identified and the appropriate ASPR patent rights clause shall be made applicable to such portion if a patent rights clause is required by this Regulation.

c. If the request states that an agency clause is not required in any resulting contract and the work to be performed under the contract is not wholly on behalf of the agency, then an appropriate ASPR patent rights clause shall be used if a patent rights clause is required by this Regulation.

d. If the request states that an agency clause is not required in any resulting contract and such contract is wholly on behalf of the agency, then no patent rights clause shall be included in such contract.

(2) The price of any contract described in (1) above shall in no event be increased by reason of the inclusion of any patent rights clause in the contract.

(b) *Deviations.* No deviations shall be made under 1–109 in the clause of any other agency providing for property rights in inventions except with the prior approval of the agency. Requests for such deviations, whether individual or blanket, shall be processed in accordance with 1–109.3.

9-107.9 *Contracts Relating to Space.* In order that inventions arising out of Department of Defense sponsored space research and development may be available for use for the benefit of the general public in communications satellite systems, whether such systems are operated by or for the Government or by private enterprise for the transmission of commercial or Government traffic, the paragraph in 7-302.23(g) shall be substituted for paragraph (c)(i) of the Patent Rights clause in 7-302.23(a), (b) and (c) and for the instructional paragraph set forth in (3)(i) of 9-109.6(e) when a greater domestic rights determination is made in a situation in which the clause in 7-302.23(a) or (c) is applicable in any contract having as one of its purposes the performance of research and development work under a space program, project, or task, except as provided in 9-107.8.

9-108 Patent Rights Under Contracts for Personal Services.

(a) Except as provided in (b) below, the clause in 7-503.9 which is based on Executive Order 10096, shall be inserted in all contracts with individuals who are to render personal services.

(b) When it is contemplated that research, experimental, or developmental work will not be involved, paragraph (b) of the clause may be omitted. In addition, the clause may be modified or omitted when:

- (i) the period of employment is to be not more than 90 days in any one calendar year; or
- (ii) (A) the period of employment called for in the contract or in any renewal thereof is more than 90 days but not more than one year of full-time service, and
  - (B) the prospective contractor is bound by an obligation which existed prior to entering into the proposed contract with the Government and which was not entered into in contemplation thereof, and the discharge of which would be inconsistent with the discharge of any obligation arising under Executive Order 10096.

9-109 Administration of Patent Rights Clauses.

9-109.1 *Patent Rights Follow-up.* It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public, and to enable the Government, the contractor and the public to avoid unnecessary payment of royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having patent rights clauses should be so administered that:

- (i) inventions are identified, disclosed and reported as required by the contract clauses;
- (ii) the rights of the Government in such inventions are established;
- (iii) when appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;
- (iv) the rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and
- (v) expeditious commercial utilization of such inventions is achieved.

9-109.2 *Follow-up by Contractor.* Each contractor shall establish and maintain effective procedures to ensure that Subject Inventions are timely identified, disclosed and, when appropriate, patent applications filed so that the Government's rights therein are established and protected.

9-109.3 *Follow-up by Government.*

(a) Each Department shall maintain "follow-up" procedures to assure that Subject Inventions are identified, disclosed, and when appropriate, patent applications filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts which include a clause referenced in 9-107.7 or 9-107.8 shall be coordinated with the appropriate agency.

(b) The contracting officer administering the contract shall be responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause. When the contractor fails to furnish documents or information called for by the clause within the time required by the clause, the contracting officer administering the contract shall promptly request the contractor to supply the required documents or information and, if the failure persists, shall take appropriate action to secure compliance. Invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses shall be sent by the contracting officer administering the contract to the procuring Department for appropriate action.

(c) The procuring Department shall establish a method to detect and correct failures by the contractor to comply with his obligations under the patent rights clauses, such as failures to disclose and report Subject Inventions, both before and after the contract otherwise has been performed. This effort should be directed primarily towards contracts which because of the nature of the research, development or experimental work or the large dollar amount spent on such work, are more likely to result in Subject Inventions significant in number or quality, and towards contracts when there is reason to believe the contractors may not be complying with their contractual obligations. Other contracts should be spot-checked when feasible. As a minimum, appropriate follow-up activities shall include the investigation or review of selected contracts or contractors by an individual or team qualified in patent and technical matters.

(d) Follow-up activities should include use of Government patent personnel:

- (i) to interview Departmental technical personnel to identify novel developments made in contracts under their cognizance;
- (ii) to review technical reports submitted by contractors with cognizant Departmental technical personnel;

(iii) to check the Official Gazette of the United States Patent Office and other sources for patents issued to the contractor in fields related to his Government contracts; and

(iv) if additional information is required, to have cognizant Government personnel interview contractor personnel as to work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

9-109.4 *Remedies.* When a contractor or subcontractor is determined not to have a clear understanding of the rights and obligations of the parties under a patent rights clause, or his procedures for complying with the clause are deficient in some respect, a post-award orientation conference or letter should be used to explain these rights and obligations (see Section I, Part 18). If a contractor fails to establish, maintain or follow effective procedures of identifying, disclosing and, when appropriate, filing patent applications on inventions as required by the patent rights clause, or fails to correct any deficiency after notice thereof, the contracting officer may require the contractor to make available for examination, books, records and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination by the contracting officer of whether there are such inventions, and may invoke the withholding of payments provision of the clause. Further, the contracting officer may invoke the withholding of payments provision if the contractor fails to disclose an invention deemed by the contracting officer to be a Subject Invention. Significant or repeated failures by a contractor to comply with the patent rights clauses of his contracts shall be documented (see 1-905.1(c)).

9-109.5 *Conveyance of Invention Rights Acquired by the Government.*

(a) When the Government acquires the entire right, title, and interest in an invention pursuant to a contract, assignments are required from the inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor, to establish clearly the chain of title from the inventor to the Government. The form of conveyance of title from the inventor to the contractor must be legally sufficient to convey the rights the contractor is required to convey to the Government. The optional form of assignment set forth below provides the complete chain of title in a single instrument and may be used to convey title to the Government. Alternatively, if separate assignments are used, both documents shall be forwarded simultaneously. All assignments shall be submitted to the contracting officer.

ASSIGNMENT

Inventor(s): ....
Contractor: ....
Contracting Government Agency: ....
Contract No: ....
Application Title: ....
Contractor's Invention Docket No: ....
Agency Invention Docket No: ....
Serial No: .... **Filing Date:** ....
Date(s) Inventor(s) Executed Oath: ....

The undersigned Inventor(s), in recognition of his (their) obligation as employee(s) of the Contractor to assign inventions to the Contractor, and pursuant to the obligations of the Contractor to the Government under the above contract hereby assigns (assign) to the United States of America, as represented by the above-identified agency, the entire right, title, and interest in and to each invention disclosed and claimed in the above U S patent application, and any substitution, division, continuation-in-part, or continuation of such patent application and any application for reissue of any patent resulting from such patent application, subject to the reservation of the following license, if any, to the Contractor

Any license reserved to the Contractor shall extend to the Contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and shall include the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded The license shall be transferable only with approval of the agency, except when transferred to the successor of that part of the Contractor's business to which such invention pertains.

The Inventor(s) further agrees (agree) to assist the Contractor and the Government, upon request, by furnishing any available information and documents, performing all acts, and doing all things which may be reasonably necessary to make this assignment effective.

The Contractor joins in and agrees to this assignment, and except for the above reservation of a license, if any, relinquishes and assigns the entire right, title and interest in and to such inventions, and further agrees to furnish to the Government, upon request, any available information and documents necessary for the prosecution of the above-identified application for patent.

*Signed this .... day of ...., 19 ....
*(SEAL)
* ....
**INVENTOR*
*ATTEST ....

* *Repeat for each inventor.*

Signed this .... day of ...., 19 ....
....
CONTRACTOR'S OFFICIAL & TITLE
ATTEST: ....

(b) When the Government is entitled to a paid-up license in a Subject Invention pursuant to a contract, the following format shall be used by the contractor or the party retaining title.

CONFIRMATORY INSTRUMENT

Application for: .... *(Title of Invention)*
Inventor(s): ....
Serial No: .... Contract No: ....
Filing Date: ..,............................ Contractor: ....

The invention identified above is a "Subject Invention" under Patent Rights clause, ... *(identify clause by title and date)* included in Contract No. .... with .... *(specify Government agency) which (does) / (does not) include the communications satellite paragraph of ASPR 7-302 23(g).*

This document is confirmatory of the paid-up license granted to the Government under this contract in this invention, patent application and any resulting patent, and of all other rights acquired by the Government by the referenced clause.

The Government is hereby granted an irrevocable power to inspect and make copies of the above-identified patent application.

Signed this .... day of ...., 19 –
(SEAL)
.... *(Contractor)*

By ....

Contractor's Official & Title

.... (*Business Address*)

(c) *Register of Government Rights in Inventions.* Licenses, assignments, or other documents evidencing any rights of the Government in inventions shall be reviewed by the Departments to assure that each such document fully confirms the rights to which the Government is entitled. The original and a copy of each such document shall be forwarded to the activity designated by Departmental regulations for receiving such documents. This latter activity shall forward the originals of all licenses, assignments, or other documents evidencing any rights of the Government in or under any patents or applications for patents to the Commissioner of Patents and Trademarks for recording in accordance with Executive Order No. 9424 of 18 February 1944.

9-109.6 *Retention of Greater Rights.*

(a) *Request for Retention of Greater Domestic Rights.*

(1) A contractor's request for a determination that he retain greater domestic rights in an identified Subject Invention under a contract containing one of the patent rights clauses of 7-302.23(a), (c), (h) or (i) shall be submitted in writing to the contracting officer within the time period set forth in these clauses. The request may be made by the contractor or by the employee-inventor(s) of the contractor with the authorization of the contractor.

(2) The following information, as appropriate, shall be submitted in support of a request for a determination under any of the clauses:

(i) identification by number of the prime contract and any subcontract, under which the invention was made, the contracting office and the applicable patent rights clause;

(ii) a copy of the invention disclosure or a brief description of the invention and identification of the inventor(s);

(iii) whether the invention is of a type identified in (b)(i) through (iii) below;

(iv) the nature and extent of rights desired;

(v) intended commercial market(s) for the invention and any relationship of such market(s) to the requesting party's established markets;

(vi) if further development of the invention is needed to render the invention suitable for the intended commercial market(s), the extent of such development intended to be undertaken by the requesting party and the requesting party's capabilities for undertaking such development;

(vii) if manufacture and/or marketing of the invention are intended to be undertaken by the requesting party, the manufacturing and/or marketing capabilities of the requesting party;

(viii) if licensing of the invention is intended, the requesting party's experience and program in licensing rights to inventions, especially in the intended commercial market(s);

(ix) if the invention is of a type identified in (b) (i) through (iii) below, evidence that the acquisition of the desired rights is a necessary incentive to call forth private funding to bring the invention to the point of practical application, or that the Government's contribution to the making of the invention is small compared to that of the requesting party;

(x) if the requesting party is the employee-inventor, a copy of the contractor-employer's authorization;

(xi) if a *Patent Rights-Acquisition by the Government* clause is applicable, whether the invention is directly related to a principal purpose of the contract;

(xii) if a *Patent Rights-Deferred* clause is applicable, and the invention is not of a type identified in (b)(i) through (iii) below, any available information indicative of the likelihood of more expeditious development to the point of practical application of the invention by the intentions and plans of the requesting party than by the activities of the Government.

(b) *Consideration of Requests for Retention of Greater Domestic Rights*. The contracting officer shall consider each request for a determination for the retention of greater domestic rights submitted within the period specified in the Patent Rights clause and shall make the determination in accordance with the criteria of the following paragraphs (c) and (d), as applicable. In general, more stringent criteria are to be applied in considering requests pertaining to inventions which are:

(i) intended to be developed for commercial use or to be required for such use by governmental regulations; or

(ii) directly concerned with the public health, welfare or safety; or

(iii) in a field of science or technology in which there has been little significant experience outside of work funded by the Government, or where the Government has been the principal developer of the field, and the exclusive rights might confer on the contractor a preferred or dominant position; particularly when any such invention is directly related to a principal purpose of a contract containing a *Patent Rights-Acquisition by the Government* clause.

(c) *Criteria for a Determination for the Retention of Greater Rights Under a Patent Rights-Acquisition by the Government Clause*. When the request for a determination for the retention of greater rights relates to an invention made under a contract containing either of the clauses of 7–302.23(a) or (h):

(i) the requesting party may retain greater rights where the contracting officer finds the invention is within (b)(i) through (b)(iii) above and is directly related to a principal purpose of the contract, and determines that the requesting party has *conclusively* established that:

(A) the greater rights are a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application; or

(B) the Government's contribution to the invention is small compared to that of the requesting party;

(ii) the requesting party may retain greater rights where the contracting officer finds the invention is within (b)(i) through (b)(iii) above and is *not* directly related to a principal purpose of the contract, and determines that the requesting party has *convincingly* established that:

(A) the greater rights are a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application; or

(B) the Government's contribution to the invention is small compared to that of the requesting party;

(iii) the requesting party may retain the desired greater rights where the contracting officer finds the invention is not within (b)(i) through (b)(iii) above and determines that the requesting party has *adequately* established that the invention will be more expeditiously developed to the point of practical application by his intentions and plans than by the activities of the Government.

(d) *Criteria for a Determination for the Retention of Greater Rights Under a Patent Rights-Deferred Clause.* When the request for a determination for the retention of greater rights relates to an invention made under a contract containing either of the clauses of 7-203.23(c) or (i):

(i) the requesting party may retain greater rights where the contracting officer finds the invention is within (b)(i) through (iii) above and determines that the requesting party has *convincingly* established that:

(A) the greater rights are a necessary incentive to call forth private risk capital and expense to bring the invention to the point of practical application; or

(B) the Government's contribution to the invention is small compared to that of the requesting party;

(ii) the requesting party may retain greater rights where the contracting officer finds the invention is *not* within (b)(i) through (b)(iii) above and determines that the requesting party has *adequately* established that the invention will be more expeditiously developed to the point of practical application by his intentions and plans than by the activities of the Government.

(e) *Greater Domestic Rights Determinations.*

(1) The contracting officer shall notify the party requesting a determination for the retention of greater rights in writing of the decision. If the determination constitutes a partial or complete denial of the greater rights requested to be retained, the notification shall set forth the reasons therefor (see 9-107.3(c)).

(2) When the determination provides for the requesting party to retain title, the determination shall require that a domestic patent application be filed on the invention, shall state that it is conditioned upon compliance with the filing period provisions of (i) below, and require compliance with the provisions of (ii) to (v) below:

(i) the application shall be filed within 6 months from the date of the determination, or such longer period as may be approved in writing by the contracting officer for good cause shown in writing by the requesting party;

(ii) for each patent application filed, the party shall:

(A) within 2 months after such filing, or within 2 months after the date of a determination if such patent application previously has been filed, deliver to the contracting officer a copy of the application as filed, including the filing date and serial number;

(B) include the following statement in the second paragraph of the specification of the application and any issuing patent: "The Government has rights in this invention pursuant to Contract (or Grant) Number .... awarded by .... (*identify the Department*)";

(C) within 6 months after such filing, or within 6 months after submission of the invention disclosure if the patent application has been previously filed, deliver to the contracting officer a duly executed and approved instrument on the form specified in 9-109.5(b) fully confirmatory of all the rights to which the Government is entitled, and provide the Department an irrevocable power to inspect and make copies of the patent application file;

(D) provide the contracting officer with a copy of the patent within 2 months after a patent issues on the application; and

(E) not less than 30 days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the contracting officer of any decision not to continue prosecution of the application and deliver to the contracting officer executed instruments granting the Government a power of attorney to prosecute the application; and

(iii) if the requesting party fails to file an application within the prescribed time periods, or decides not to continue prosecution of the application, or no longer desires to retain title, he shall convey to the Government, upon request, his entire right, title, and interest in the invention, and to any corresponding patent application or patent. The conveyance shall be made by delivering to the contracting officer duly executed instruments (prepared by the Government) and, if applicable, such other papers as are deemed necessary to vest in the Government the entire right, title, and interest in the invention and any corresponding patent application and to enable the Government to prosecute the application.

(3) When the determination provides for the requesting party to retain title, the determination shall also require the requesting party to:

(i) grant to the government a nonexclusive, nontransferable, paid-up license to make, use, and sell each Subject Invention throughout the world by, or on behalf of, the Government of the United States (including any Government agency) and States and domestic municipal governments. Nothing contained herein shall be deemed to grant any rights with respect to any inventions other than a Subject Invention;

(ii) agree to grant, upon request of the Government, a license on terms that are reasonable under the circumstances to responsible applicants:

(A) unless the contractor, his licensee, or his assignee demonstrates to the Government that effective steps have been taken within 3 years after a patent issues on such invention to bring the invention to the point of practical application or that the invention has been made available for licensing royalty-free or on terms that are reasonable in the circumstances, or can show cause why the principal or exclusive rights should be retained for a further period of time; or

(B) to the extent that the invention is required for public use by governmental regulations or as may be necessary to fulfill public health, welfare or safety needs, or for other public purposes stipulated in this contract;

(iii) submit written reports at reasonable intervals upon request of the Government, during the term of the patent on the Subject Invention as to:

(A) the commercial use that is being made or is intended to be made of such invention; and

(B) the steps taken by the contractor or his transferee to bring the invention to the point of practical application, or to make the invention available for licensing;

(iv) agree to arrange, when licensing any Subject Inventions, to avoid royalty charges on procurements involving Government funds, including funds derived through the Military Assistance Program of the Government or otherwise derived through the Government, and to refund any amounts received as royalty charges on any Subject Invention in procurements for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in such invention to any party; and

(v) agree to provide for the Government's paid-up license pursuant to (i) above in any instrument transferring rights in a Subject Invention and to provide for the granting of licenses as required by (ii) above, and for the reporting of utilization information as required by (iii) above whenever the instrument transfers principal or exclusive rights in any Subject Invention.

When the determination is made in a situation in which one of the Patent Rights clauses of 7-302.23(a) or (c) is applicable, the above requirements of this subparagraph (3) may be indicated in the determination by reference to paragraph (c) "*Minimum Rights Granted to the Government*" of the applicable clause. When the determination is made in a situation in which one of the patent rights clauses of 7-302.23(h) or (i) is applicable, the above requirements shall be indicated by reference to this instructional provision.

(f) *Greater Foreign Rights Determinations.*

(1) A request for a determination of retention of greater foreign rights in an invention under the patent rights clauses of either 7-302.23(a), (c), (h) or (i)

may accompany a request for a determination of retention of greater domestic rights or may be submitted independently thereof. The request shall be submitted to the contracting officer and shall contain the following information:

(i) identification by number of the prime contract and any subcontract under which the invention was made, the contracting office and the applicable patent rights clause;

(ii) a copy of the invention disclosure or a brief description of the invention and identification of the inventor(s);

(iii) the countries in which the requesting party intends to file a patent application; and

(iv) other information required by the contracting officer.

(2) If the Government intends not to file a patent application on the invention in any foreign country in which the requesting party intends to file, the contracting officer may authorize the requesting party to retain the principal rights, and to file a patent application. in each such foreign country if the contracting officer determines such authorization to be in the public interest. The contracting officer shall notify the requesting party in writing of his determination. If the determination constitutes a partial or complete denial of the foreign rights requested, the notification shall set forth the reasons therefor. (See 9-107.3(c).)

(3) When the determination requires the requesting party to file and prosecute a foreign patent application on the invention, the determination shall be subject to the following provisions:

(i) the requesting party shall grant to the Government a nonexclusive, nontransferable, paid-up license to practice and have practiced the invention by or on behalf of the Government in each foreign country in which an application is filed;

(ii) the requesting party shall file and prosecute a patent application on the invention in (*identify the foreign countries*) in accordance with applicable statutes and regulations and within one of the following periods:

  (A) eight months from the date a corresponding United States patent application is filed by or on behalf of the requesting party; or if such an application is not filed, six months from the date of this determination;

  (B) six months from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign applications where such filing has been prohibited by security reasons; or

  (C) such longer period as may be approved by the contracting officer;

(iii) the requesting party shall notify the contracting officer promptly of each foreign application filed and, upon written request of the contracting officer, shall furnish an English version of such foreign application without additional compensation; and

(iv) if the requesting party files a patent application on a Subject Invention in any foreign country, or if a patent is obtained on such application, the party shall notify the contracting officer, not less than 60 days before the expiration period for any action required by the foreign patent office, of any decision not to continue prosecution of the application or not to pay any maintenance fee covering the invention and within such period shall deliver to the contracting officer:

(A) executed instruments granting to the Government a power of attorney in the application;

(B) an English version of the application, if not previously provided; and

(C) upon request, a conveyance of the party's entire right, title, and interest in the invention in the foreign country, and to any corresponding patent application or patent.

9-110 Reporting of Royalties — Anticipated or Paid.

(a)(1) The term "royalties," as used in this Part, refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents or patent applications.

(2) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with rights which the Government may possess in particular inventions, patents, or patent applications, the Departments shall require royalty information and reports as prescribed below. See 9-112 for action to be taken to reduce or eliminate excessive or improper royalties.

(3) Royalty information should not be required in formally advertised contracts. When it is expected that work may be performed in the United States, its possessions, or Puerto Rico, any solicitation which may result in a negotiated contract for which royalty information is desired, or for which cost or pricing data are obtained under 3-807.3, shall contain a special provision substantially as in 7-2003.42.

(b) If the work is to be performed in the United States, its possessions or Puerto Rico, then upon receipt of an offer, proposal, or quotation which includes a charge for royalties, the contracting officer shall, prior to award of the contract, forward the information called for by (a) above to the office having cognizance of patent matters for the procuring activity concerned. The cognizant office shall promptly advise the contracting officer of appropriate action. The contracting officer shall then take action with respect to such royalties, with due regard to all pertinent factors relating to the proposed procurement.

(c) When subcontract work is to be performed in the United States, its possessions, or Puerto Rico, the contracting officer, when considering approval of a subcontract, shall require the same information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under (b) above. However, approval need not be withheld pending receipt of advice in regard to such royalties from the office having cognizance of patent matters.

(d) (1) In negotiated contracts to be performed outside the United States, its possessions and Puerto Rico, regardless of the place of delivery, the clause in 7-104.8(a) shall be included. See 16-806 for an approved form for optional use by contractors in submitting the required report.

(2) The contracting officer shall forward a copy of each positive royalty report received in accordance with the clause in (1) above to the office having cognizance of patent matters for the procuring activity concerned.

9-111 Refund of Royalties. When a fixed-price-type contract is negotiated under circumstances which make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or his subcontractors, such royalties may be included in the target or contract price, with provision made in the contract that the Government will be reimbursed the amount of such royalties if they are not paid. Such circumstances might include, for example, either a pending anti-trust action by the Government or pending or prospective litigation challenging the validity of a patent or patents or the enforceability of an agreement upon which the contractor or subcontractor bases the asserted obligation to pay the royalties to be included in the target or contract price. In the event the contracting officer determines that a refund of royalties clause should be included, the clause in 7-104.8(b) shall be used in firm fixed-price contracts. It shall be appropriately modified for use in incentive contracts.

9-112 Adjustment of Royalties.

(a) If at any time the contracting officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, he shall promptly report the facts to the office having cognizance of patent matters for the procuring activity concerned. The cognizant office shall review the royalties thus reported and such royalties as are reported under 9-110 and 9-111. In coordination with the contracting officer, the cognizant office shall:

(i) take prompt action to protect the Government against payment of royalties on supplies or services (A) with respect to which the Government has a royalty-free license, or (B) at a rate in excess of the rate at which the Government is licensed, or (C) when the royalties in whole or in part otherwise constitute an improper charge; and

(ii) in appropriate cases obtain a refund pursuant to a "Refund of Royalties" clause or enter into negotiation for a reduction of royalties.

(b) For guidance in evaluating information furnished pursuant to 9-110 and (a) above, see 15-205.36 and 15-309.33. Also see 15-107 regarding advance understandings on particular cost items, including royalties.

PATENTS, DATA, AND COPYRIGHTS

Part 2—Rights in Technical and Other Data and Copyrights

9-200 Scope of Part. This Part sets forth the Department of Defense policy, implementing instructions, and contract clauses with respect to acquisition of rights in technical and other data and copyrights. It relates only to the acquisition of rights in data and does not establish requirements for data. (See Section IX, Part 5, for information concerning acquisition of data.)

9-201 Definitions. For the purposes of this Part, the following terms have the meanings set forth below:

(a) *Data* means recorded information, regardless of form or characteristic.

(b) *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(c) *Limited Rights* means rights to use, duplicate, or disclose technical data in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture, or in the case of computer software documentation, for reproduction of the computer software, or (c) used by a party other than the Government, except for:

(i) emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, *provided* that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(ii) release to a foreign government, as the interest of the United States may require, only for information or evaluation within such government or for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(d) *Unlimited Rights* means rights to use, duplicate, or disclose technical data or computer software in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

9-202 Acquisition of Rights in Technical Data.

9-202.1 *Background.*

(a) *Government's Interest in Technical Data.* The Government has extensive needs for many kinds of technical data. Its needs may well exceed those of private commercial customers. For defense purposes millions of separate equipment and supply items, ranging from standard to unique types, must be acquired, operated, and maintained, often at points remote from the source of supply. Functions requiring varied kinds of technical data include training of personnel, overhaul and repair, cataloging, standardization, inspection and quality control, packaging, and logistics operations. Data resulting from research and development contracts must be obtained, organized and disseminated to many different users. Finally, the Government must make technical data widely available in the form of contract specifications in order to obtain competition among its suppliers, and thus further economy in Government procurement.

(b) *Contractors' Interest in Technical Data.* Commercial organizations have a valid economic interest in data pertaining to items, components, or processes which they have developed at their own expense. Such data is often closely held because its disclosure to competitors could jeopardize the competitive advantage it was developed to provide. Public disclosure of such technical data can cause serious economic hardship to the originating company.

(c) *The Balancing of Interests.* It is apparent that there is no necessary correlation between the Government's need for technical data and its contractors' economic interests therein. However, in balancing the Government's requirements for technical data against the contractor's interest in protecting his data, it should be recognized that there may be a considerable identity of interest. This is particularly true in the case of innovative contractors who can best be encouraged to develop at private expense items of military usefulness where their rights in such items are scrupulously protected. It is equally important that the Government foster successful contractual relationships and encourage a ready flow of data essential to Government needs by confining its acquisitions of technical data to cases of actual need. Certainly the Government must not be barred from bargaining and contracting to obtain such technical data as it needs, even though that data may normally not be disclosed in commercial practice. Moreover, when the Government pays for research and development work which produces new knowledge, products or processes, it has an obligation to foster technological progress through wide dissemination of the new and useful information derived from such work and where practicable to provide competitive opportunities for supplying the new products and utilizing the new processes. At the same time, acquiring, maintaining, storing, retrieving, and distributing technical data in the vast quantities generated by modern technology is costly and burdensome for the Government. For this reason alone, it would be necessary to control closely the extent and nature of data procurement. Such control is also necessary to insure Government respect for its contractors' economic interest in technical data relating to their privately developed items. The policies and procedures of this Part are framed in the light of these considerations.

9-202.2 *Policy.*

(a) *General.* It is the policy of the Department of Defense to acquire only such technical data rights as are essential to meet Government needs. (See Section IX, Part 5, for information concerning acquisition data.)

(b) *Unlimited Rights Technical Data.* Technical data in the following categories shall be acquired with unlimited rights:

(1) technical data resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

(2) technical data necessary to enable others to manufacture end-items, components and modifications, or to enable them to perform processes, when the end-items, components, modifications or processes have been, or are being, developed under Government contracts or subcontracts in which experimental, developmental or research work was specified as an element of contract performance, except technical data pertaining to items, components or processes developed at private expense;

(3) technical data prepared or required to be delivered under any Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(4) technical data pertaining to end-items, components or processes, prepared or required to be delivered under any Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics and performance requirements ("form, fit and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(5) manuals or instructional materials prepared or required to be delivered under a Government contract or subcontract for installation, operation, maintenance or training purposes; and

(6) technical data which is in the public domain or has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure. "In the public domain" means available to the public without copyright or other restriction of any kind.

(c) *Limited Rights Technical Data.* Except as provided in (b) above, unpublished technical data pertaining to items, components or processes developed at private expense will be acquired with limited rights, provided that the data is identified as limited rights data in accordance with paragraph (b)(2) of the clause in 7-104.9(a). Unpublished, as applied to technical data and computer software documentation, means that which has not been released to the public nor been furnished to others without restriction on further use or disclosure.

(It should be clearly understood that the above statement of policy is a recital of rights to be acquired in technical data. Neither the foregoing statement of data rights policy, nor its implementing paragraph (b)(1) and (2) of the clause in 7-104.9(a), establishes data requirements for a particular contract. It should also be noted that technical data pertaining to items, components or processes developed at private expense may be called for, required, or otherwise furnished under (b)(1), (3), (4), (5) and (6) above and, as such, it will be acquired with unlimited rights. Contract clauses and the schedule establish the form and type of data to be furnished; the categories into which such technical data fall, determine the rights to be obtained by the Government to use or publish such data.)

(d) *Predetermination of Rights in Technical Data.*

(1)(a) When the Government needs technical data with unlimited rights, any data which the offeror intends to deliver with limited rights pursuant to (c) above should be identified prior to contract award, if feasible, and an agreement with respect thereto shall be incorporated in the contract. This procedure is called predetermination of rights in technical data.

(b) The procedure may be initiated by the contracting officer or an offeror during the negotiation of a negotiated contract. In order to be productive, the procedure should apply only to that technical data for which rights may practicably be identified. Although the agreement may also cover technical data to be delivered with unlimited rights, in no case shall the procedure be used to require the contractor to furnish, with unlimited rights, data which he is entitled to furnish with limited rights under the policy in (c) above. The contracting officer shall consult his counsel as fully as possible in determining whether to use the procedure and in connection with the various steps of the procedure.

(2) Any agreements reached shall be incorporated in the Schedule of the contract directly or by reference and shall describe specifically the technical data which may be furnished with limited rights pursuant to (c) above. The contracting officer may, however, review the data asserted to be limited rights data to determine whether to invoke the procedures of (f) below to negotiate to purchase unlimited rights in any of the data, or adopt some alternative such as to:

(i) delete or modify the requirement for the data in which the Government would need unlimited rights if it were ordered, or

(ii) modify the specifications so as not to require or permit the use of the item, component or process covered by the limited rights data, or

(iii) include a contractual option to acquire unlimited rights.

(3) When the predetermination of rights in data procedure is to be used, include the provision in 7-2003.61 in the Request for Proposals.

(4) If completion of predetermination proves impracticable before award, or if contractual requirements relating to design or data items are changed during the course of a contract, an appropriate provision shall be included in the contract, requiring the contractor to complete the identification of limited rights with respect to that data listed in the solicitation for which predetermination was proposed, or to identify limited rights data relating to the changed requirements.

(e) *Subcontracts.* It is the policy of the Department of Defense that prime contractors and higher-tier subcontractors shall not use their power to award subcontracts as economic leverage to acquire rights in the technical data of their subcontractors for themselves. Accordingly, a subcontractor who would have the right pursuant to (c) above to furnish technical data with limited rights, may furnish such limited rights data directly to the Government rather than through the prime contractor.

(f) *Specific Acquisition of Unlimited Rights in Technical Data.*

(1) Notwithstanding (c) above or any other provision of this Part, the Government may acquire unlimited rights in any limited rights technical data by means of negotiation with an individual contractor or subcontractor, or as a part of a competition among several contractors or subcontractors. Such individual negotiation or competition may be conducted either by the Government, or upon Government request by the prime contractor or higher-tier subcontractor. Such unlimited rights in technical data shall be stated in the contract schedule as a separate item and shall be separately priced. Unlimited rights in technical data shall not be acquired under this paragraph unless it is determined after a finding upon a documented record that:

(i) there is a clear need for reprocurement of the item, component or process to which the technical data pertains;

(ii) there is no suitable item, component or process of alternate design or availability;

(iii) the item or component can be manufactured or the process performed through the use of such technical data by other competent manufacturers, without the need for additional technical data which cannot be purchased reasonably or is not readily obtained by other economic means; and

(iv) anticipated net savings in reprocurements will exceed the acquisition cost of the technical data and rights therein.

(2) The analysis and findings referred to in (1) above shall specifically identify each item, component or process and the particular technical data therefor which is to be purchased.

(3) When all technical data is to be acquired under any contract with unlimited rights in accordance with the findings of (1) above, the clause in 7-104.9(c) shall be used.

(4)(a) In addition to the acquisition of unlimited rights in data as authorized in (1) above, there will be situations when it is in the best interests of the Government to acquire from subcontractors repair parts or components by direct sale to the Government.

(b) The clause set forth in 7-104.9(k) may be used in contracts for major systems or major subsystems involving estimated program expenditures in excess of $50,000,000 of RDT&E funds or in excess of $200,000,000 of production funds. When this clause is used, any compensation the contractor requires for the right the subcontractor will have to use his limited rights data shall be included in the price of the prime contract. Also, the Government shall have the right to purchase such items direct from manufacturing subcontractors without the payment, either directly of any fee or royalty to the prime contractor, or as part of the purchase price, for use of the prime contractor's data.

(c) For the purpose of applying the foregoing policy, the following definitions shall be utilized: A major system is a composite of equipment, skills, and techniques capable of performing and/or supporting an operational role which required or will require research, development, test and evaluation investment or design, development, test and evaluation investment estimated in excess of $50 million or total production investment estimated in excess of $200 million. A major subsystem is a major functional part of a major system (as defined above) which is essential to operational completeness. Examples are: airframe, propulsion, armament, guidance and communication. A major system or major subsystem contractor includes an associate contractor defined as a prime contractor to the Government for developing and/or producing subsystems, equipment, or components meeting specifications prepared by a contractor performing one or more of the functions of systems engineering for a major system (as defined above).

(g) *Notice of Certain Limited Rights.*

(1) Whether or not the procedure of (d) above for predetermination of rights in technical data is used, if continuing information is desired under a contract about a contractor's intention to use in the performance of the contract any item, component, or process for which technical data would be subject to limited

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rights in accordance with the policy of (c) above, the contractor may be required to advise the contracting officer of this fact promptly (see 9-203(b)). If possible, the schedule should indicate the specific areas pertaining to which limited rights data is of concern and the notice requirement should be restricted to those areas of concern.

(2) No such advice shall be required as to items, components, or processes for which notice was previously given pursuant to the predetermination procedure in the same contract, or with respect to standard commercial items which are manufactured by more than one source of supply. No contracting officer approval under this clause is necessary for the contractor to use any item, component, or process, identified pursuant to this requirement, in the performance of the contract.

(3) If the contracting officer agrees that under the policy stated in (c) above such technical data would be subject to limited rights, he may then determine whether to invoke the procedure of (f) above, to negotiate for the purchase of unlimited rights in such data or to adopt other suitable alternatives. The contract shall be amended to reflect any changes required by these procedures.

(h) Data Protected by Copyright. In general, the copyright law gives an owner of copyright the exclusive rights to:

(1) reproduce the copyrighted work in copies or phonorecords;
(2) prepare derivative works;
(3) distribute copies or phonorecords to the public;
(4) perform the copyrighted work publicly; and
(5) display the copyrighted work publicly.

Accordingly, any data that is protected under the copyright law is not in the public domain, even though it may have been published, because acts inconsistent with these rights may not be exercised without a license from the copyright owner. Paragraph (c)(1) of the Basic Data Clause gives the Government a copyright license in technical data and computer software prepared for or acquired by the Government under the contract, whether or not published, of a scope necessary to satisfy the rights acquired in such data by the Government.

9-202.3 *Procedures.*

(a) *Deviations.* Extension of the six-month period of 9-202.3(d)(2) shall be processed under the authority of 1-109.2. Other deviations to this Part 2 and from the clauses prescribed for use herein shall be processed in accordance with the procedures in 1-109.3.

(b) *Establishing the Government's Rights to Use Technical Data.* All technical data specified in a contract or subcontract for delivery thereunder shall be acquired subject to the rights established in the appropriate Rights in Technical Data clauses. Except as provided in 1-1707 and in Section XVIII, Part 9, no other clauses, directives, standards, specifications or other implementation shall be included, directly or by reference, to enlarge or diminish such rights. The Government's acceptance of technical data subject to limited rights does not impair any rights in such data to which the Government is otherwise entitled or impair the Government's right to use similar or identical data acquired from other sources.

(c) *Marking of Technical Data.*

(1) Technical data delivered to the Government pursuant to any contract requirement shall be marked with the number of the prime contract, except as provided in 9-605(b), and the name of the contractor and any subcontractor who generated the data. Each piece of data submitted with limited rights shall also be marked with:

(i) the authorized restrictive legend,
(ii) an indication (for example, by circling, underscoring, or a note) of that portion of the piece of data to which the legend is applicable, and
(iii) an explanation of the indication used to identify limited rights data.

The Government shall include such identifying markings on all reproductions thereof, unless the Government cancels such markings pursuant to (c)(2), (d)(3) or (d)(4) below.

(2) The contractor has the responsibility to assure that no restrictive markings are placed on technical data except in accordance with the "Rights in Technical Data and Computer Software" clause in 7-104.9(a). Copyright notices as specified in Title 17 United States Code, Sections 401 and 402, are not considered "restrictive markings." When the clause in 7-104.9(a) is required by 9-203(a), the "Restrictive Markings on Technical Data" clause in 7-104.9(p) shall also be included in the contract. The contractor's procedures required by this clause shall be reviewed periodically by the Contract Administration Office. In addition to the rights afforded to the Government by the clause in 7-104.9(p), the following actions are available to insure proper marking of technical data:

(i) The procedures in paragraph (d), "Removal of Unauthorized Markings," of the clause in 7-104.9(a) may be invoked if the contractor fails to follow procedures required by the clause in 7-104.9(p) or fails to correct deficiencies within a specified time.
(ii) Failure to follow proper marking procedures may also be deemed to render technical data nonconforming and subject to 14-406 and to withholding of payments under the "Technical Data—Withholding of Payments" clause.
(iii) When a pre-award survey is requested by the purchasing office, the quality assurance review shall include as an item of special inquiry an examination of the prospective contractor's procedures for complying with the "Restrictive markings on Technical Data" clause.
(iv) The contractor's procedures for complying with the "Restrictive Markings on Technical Data" clause shall be reviewed when holding post-award conferences pursuant to Section I, Part 18.

(d) *Unmarked or Improperly Marked Technical Data.*

(1) The Government shall have the right to require the contractor to furnish clear and convincing evidence of the propriety of any restrictive markings used by the contractor on data furnished to the Government under contract.

(2) Technical data received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, within six months after delivery of such data the contractor may request permission to place restrictive markings on such data at his own expense and the Government may so permit if the contractor:

(i) demonstrates that the omission of the restrictive marking was inadvertent,

(ii) establishes pursuant to (d)(1) above that the use of the markings is authorized, and

(iii) relieves the Government of any liability with respect to such data (see 9-202.3(a)).

(3) If technical data which the contractor is not authorized by the contract to furnish with limited rights is received with restrictive markings, the data shall be used with limited rights pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to substantiate by clear and convincing evidence that the markings were authorized, the cognizant Government personnel shall cancel or ignore such markings, notify the contractor accordingly in writing, and thereafter may use such data with unlimited rights.

(4) If technical data which the contractor is authorized by the contract to furnish with limited rights is received with restrictive markings not in the form prescribed by the contract, the data shall be used with limited rights, and the con-

tractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to so correct the markings within 60 days after notice, Government personnel may correct or cancel the markings, so notify the contractor in writing, and thereafter use the data accordingly.

(e) *Technical Data Furnished on a Restricted Basis in Support of a Proposal.* When the contracting officer contemplates awarding a contract on a solicited or unsolicited proposal which was offered on a restricted basis (see 3-507 and 4-913), he shall ascertain whether to acquire rights to use all or part of the technical data furnished with the proposal. If such rights are desired, the contracting officer shall negotiate with the offeror in accordance with the policies set forth in this paragraph 9-202. If the offeror agrees to furnish the technical data under the contract, the appropriate clause in 7-104.9 shall be inserted in the contract, and the contract shall identify the data to be covered by the clause as provided by Part 5 of this Section.

(f) *Delivery of Technical Data to Foreign Governments.* As provided in 9-201(b), limited rights include the right of the Government to deliver the technical data to foreign governments as the national interest of the United States may require, subject to the same limitations which the Government accepts for itself. When the Government proposes to make technical data subject to limited rights available for use by a foreign government, it will, to the maximum extent practicable, give reasonable notice thereof to the contractor or subcontractor who generated the technical data and whose name appears thereon.

9-203 Contract Clauses.

(a) *General.* In every contract in which technical data is specified to be delivered, insert the clause in 7-104.9(a), *provided* that such clause shall not be used in contracts:

(i) when all technical data to be delivered is to be acquired with unlimited rights pursuant to 9-202.2(f)(1), (2), and (3) in which case the clause in 7-104.9(c) shall be used;

(ii) when existing works are acquired in accordance with 9-205;

(iii) when the clause in 7-104.9(e) is used in accordance with the provisions of 9-204.2; or

(iv) to be performed outside the United States, its territories, possessions, or Puerto Rico, in which case the clause in 7-104.9(g) applies.

(b) *Notice of Certain Limited Rights.* The paragraph (h) in 7-104.9(b) may be added to the clause in 7-104.9(a) in any contract in which the contracting officer desires notification of limited rights data (see 9-202.2(g)).

(c) *Technical Data Clause—Specific Acquisition.* The clause in 7-104.9(c) shall be used in any contract in which all technical data is to be acquired with unlimited rights pursuant to 9-202.2(f). In addition, if the Government has determined to acquire all technical data with unlimited rights from a subcontractor pursuant to 9-202.2(f), the clause in 7-104.9(c) shall be used. The clause shall not be used under any other circumstances.

(d) *Identification of Experimental, Developmental or Research Work.* To prevent any misinterpretation of the scope of the rights in technical data provisions of the contract, the schedule provision in 7-104.9(j) may be included in contracts which, in whole or in part, call for experimental, developmental or research work as an element of performance.

9-204 Contract Clauses—Special.

9-204.1 *Limitation on Government's Right of Publication for Sale to the General Public.* The paragraph in 7-104.9(i) may be added to the clause in 7-104.9(a) for use in contracts for research when the contracting officer determines, in consultation with counsel, as appropriate, that public dissemination of a work, or certain designated parts of a work specified to be delivered under the contract is in the best interest of the Government and would be facilitated by the Government relinquishing its right to publish the work for sale, or to have others publish the work for sale on behalf of the Government. This paragraph shall not be used otherwise.

9-204.2 *Production of Special Works.* The clause in 7-104.9(e) shall be used in all contracts for special works, including technical data and computer software, where ownership and control by the Government is desired, for example, in contracts (i) primarily for the production of audiovisual works including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translations, adaptations, and the like; (ii) for histories of the respective Departments or services or units thereof; (iii) for works pertaining to recruiting, morale, training, or career guidance; (iv) for surveys of Government establishments; (v) for works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties; and (vi) primarily for production of technical reports, studies, or similar documents. Contracts for audiovisual works may include limitations in connection with music licenses, talent releases, and the like which are consistent with the purpose for which the works are procured.

9-205 Contracts for Acquisition of Existing Works.

9-205.1 *Off-the-Shelf Purchase of Books and Similar Items.* Notwithstanding the instructions of any other paragraphs in this Part, no contract clause contained in this Part need be included in contracts for the separate, sole procurement of data, other than motion pictures, in the exact form in which such material exists prior to the initiation of a request for purchase (such as the off-the-shelf purchases of existing products) unless the right to reproduce such data is an objective of the contract.

9-205.2 *Purchase of Existing Audiovisual Works.*

(a) The clause in 7-104.9(f) shall be used in contracts exclusively for the procurement of existing motion pictures, television recordings, or other audiovisual works. The contract may set forth limitations consistent with the purposes for which the material covered by the contract is being procured. Examples of these limitations are (i) means of exhibition or transmission, (ii) time, (iii) type of audience, and (iv) geographical location. Paragraph (b) of the clause should be modified to make the idemnity coextensive with the rights acquired under paragraph (a) of the clause as limited by the contract.

(b) In contracts which call for the modification of existing motion pictures, television records or other audiovisual works through editing, translation, or addition of subject matter, the clause in 7-104.9(e), appropriately modified, shall be used.

9-206 Contracts With Foreign Sources to be Performed Outside the United States. Normally, except as otherwise provided in 6-501, 9-204.2 or 9-205, in contracts with foreign sources under which work is to be performed outside the United States, its possessions and Puerto Rico, insert the clause in 7-104.9(g) when the United States Government is to acquire unlimited rights in all technical data, including reports, drawings and blueprints, and all computer software, specified to be delivered to the Government. The clause in 7-104.9(a) shall be inserted when the same rights are to be obtained as would be obtained if contracting with United States firms. Notwithstanding 9-202.3(a), the clause may be modified to meet the requirements necessary for and peculiar to the foreign procurement, *provided* it agrees with the policies and principles of 9-202.2 and 9-602.

PATENTS, DATA, AND COPYRIGHTS

Part 3—Foreign License and Technical Assistance Agreements

9-301 General.

9-301.1 *Background.* In furtherance of the Military Assistance Program or for other national defense purposes, the Government may undertake to develop, or encourage the development of, foreign additional sources of supply. The development of such sources may be accomplished by an agreement, often called a foreign licensing agreement or technical assistance agreement, wherein a domestic concern, referred to in this Part as a "primary source" agrees to furnish to a foreign concern or government, herein referred to as a "second source," (i) foreign patent rights; (ii) technical assistance in the form of data, know-how, trained personnel of the primary source, instruction and guidance of the personnel of the second source, jigs, dies, fixtures, or other manufacturing aids; or (iii) such other assistance, information, rights, or licenses as are needed to enable the second source to produce particular supplies or perform particular services. Agreements calling for one or more of the foregoing may be entered into between the primary source and (i) the Government, (ii) a foreign government, or (iii) a foreign concern. The consideration for providing such foreign licenses and technical assistance may be in the form of a lump sum payment, payments for each item manufactured by the second source, an agreement to exchange data and patent rights on improvements made to the article or service, capital stock transactions, or any combination of these. The primary source's bases for computing such consideration may include (i) actual costs, (ii) charges for the use of patents, data, or know-how reflecting the primary source's investment in developing and engineering and production techniques, and (iii) the primary source's "price" for setting up a second source. Such agreements often refer to the compensation to be paid as a royalty or license fee whether or not patent rights are involved.

9-301.2 *Policy.* It is Government policy not to pay in connection with its contracts, and not to allow to be paid in connection with contracts made with funds derived through the Military Assistance Program or otherwise through the United States Government, charges for use of patents in which it holds a royalty-free license or charges for data which it has a right to use and disclose to others, or which is in the public domain, or which the Government has acquired without restriction upon its use and disclosure to others. This policy shall be applied by the Departments (i) in negotiating contract prices for foreign license and technical assistance contracts (9-302) or supply contracts with second sources (9-303), and (ii) in commenting on such agreements when they are referred to the Department of Defense by the Department of State pursuant to Section 414 of the Mutual Security Act of 1954 as amended (22 U.S.C. 1934) and the International Traffic in Arms Regulations (see 9-304).

9-302 Foreign License and Technical Assistance Agreements Between the Government and Domestic Concerns.

(a) Contracts between the Government and a primary source to provide technical assistance or patent rights to a second source for the manufacture of supplies or performance of services shall, to the extent practicable, specify the rights in patents and data and any other rights to be supplied to the second source. Each contract shall provide, in connection with any separate agreement between the primary source and the second source for patent rights or technical assistance relating to the articles or services involved in the contract, that—

(i) the primary source and his subcontractors shall not make, on account of any purchases by the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, any charge to the second source for (A) royalties or amortization for patents or inventions in which the Government holds a royalty-free license, or (B) data which the Government has the right to possess, use, and disclose to others, or (C) any technical assistance provided to the second source for which the Government has paid under a contract between the Government and the primary source; and

(ii) the separate agreement between the primary and second source shall (A) include a statement referring to the contract between the Government and the primary source, and (B) conform to the requirements of the International Traffic in Arms Regulations (see 9-304).

(b) The following factors, among others, shall be considered in negotiating the price to be paid the primary source under contracts within (a) above:

(i) the actual cost of providing data, personnel, manufacturing aids, samples, spare parts, and the like;

(ii) the extent to which the Government has contributed to the development of the supplies or services, and to the methods of manufacture or performance, through past contracts for research and development or for manufacture of the supplies or performance of the services; and

(iii) the Government's patent rights and rights in data relating to the supplies or services and to the methods of manufacture or of performance.

9-303 Supply Contracts Between the Government and a Foreign Government or Concern. In negotiating contract prices with a second source, including the redetermination of contract prices, or in determining the allowability of costs under a cost-reimbursement contract with a second source, the contracting officer:

(i) shall obtain from the second source a detailed statement (see 9-110(a)(3) of royalties, license fees, and other compensation paid or to be paid to a primary source (or any of his subcontractors) for patent rights, rights in data, and other technical assistance provided to the second source, including identification and description of such patents, data and technical assistance; and

(ii) shall not accept or allow charges which in effect are (A) for royalties or amortization for patents or inventions in which the Government holds a royalty-free license, or (B) for data which the Government has a right to possess, use, and disclose to others, or (C) for any technical assistance provided to the second source for which the Government has paid under a contract between the Government and a primary source.

9–304 Foreign License and Technical Assistance Agreements Between a Domestic Concern and a Foreign Government or Concern.

9–304.1 *International Traffic in Arms Regulations.* Pursuant to Section 414 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1934), the Department of State controls the exportation of data relating to articles designated in the United States Munitions List as arms, ammunition, or munitions of war. (The Munitions List and pertinent procedures are set forth in the International Traffic in Arms Regulations, 22 C.F.R. *et seq.*) Before authorizing such exportation, the Department of State generally requests comments from the Department of Defense. On request of the Office of the Assistant Secretary of Defense (International Security Affairs), each Department shall submit comments thereon as the basis for a Department of Defense reply to the Department of State. Such comments shall be prepared in the light of the following excerpt from the International Traffic in Arms Regulations.

> **Sec. 124.04 REQUIRED PROVISIONS IN AGREEMENTS.**
>
> (a) Manufacturing license or technical assistance agreements should define in precise terms the following:
>
> (1) The equipment and technology involved;
>
> (2) The scope of the information to be furnished;
>
> (3) The period of duration of the agreement;
>
> (4) Statement of ownership of equipment and special tools involved which would be made available in connection with the agreement. In lieu of inclusion as an integral part of the agreement, the applicant may submit this information in the form of an attachment or enclosure to the agreement submitted for review.
>
> (b)(1) It is the policy of the United States Government not to pay or allow to be paid in connection with purchases made with Mutual Security Program funds, a charge for patent rights in which it holds a royalty-free license, or for technical data which it has a right to use and disclose to others for purposes of the Mutual Security Program, or which are in the public domain, or with respect to which it has been placed in possession without restriction upon their use and disclosure to others. Reasonable charges for reproduction, handling, mailing, and other similar administrative costs do not fall within this policy.
>
> (2) Pursuant to the above policy (subparagraph (1) of this paragraph) agreements shall be written in such a way as to provide that (i) purchases of items by or for the United States Government, or with funds derived through the Mutual Security Program, will not include a charge (a) for technical data in the possession of the United States Government, or in which the United States Government has a right to possession, and regarding which there is no prohibition against use by the United States Government and disclosure to others and (b) for royalties or amortization for patents or inventions in which the United States Government holds a royalty-free license; and (ii) the license rights transferred by such agreements will be subject to existing rights of the United States Government. * * * * * * * *

9–304.2 *Review of Agreements.*

(a) In reviewing foreign license and technical assistance agreements between primary and second sources, the Department concerned shall, insofar as its interests are involved, indicate whether the agreement meets the requirements of Section 124.04 of the International Traffic in Arms Regulations (see 9–304.1) or in what respects it is deficient. Paragraphs (b) through (g) below provide general guidance.

(b) When it is reasonably anticipated that the Government will procure from the second source the supplies or services involved in the agreement, or that Military Assistance Program funds will be provided for the procurement of the supplies or services, the following guidance applies.

(1) If the agreement specifies a reduction in charges thereunder, with respect to purchases by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in recognition of the Government's rights in patents and data, the Department concerned shall evaluate the amount of the reduction to determine whether it is fair and reasonable in the circumstances, before indicating its approval.

(2) If the agreement does not specify any reduction in charges or otherwise fails to give recognition to the Government's rights in the patents or data involved, approval shall be conditioned upon amendment of the agreement to reflect a reduction, evaluated by the Department concerned as acceptable to the Government, in any charge thereunder with respect to purchases made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government, in accordance with Section 124.04(b) of the International Traffic in Arms Regulations.

(3) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent of the Government's rights, the Department concerned shall evaluate the acceptability of the provision before indicating its approval.

(4) If time or circumstances do not permit the evaluation called for in (1), (2), or (3) above, the guidance in (c) below shall be followed.

(c) When it is not reasonably anticipated that the Government will purchase from the second source the supplies or services involved in the agreement nor that Military Assistance Program funds will be provided for the purchase of the supplies or services, then the following guidance applies.

(1) If the agreement provides for charges to the second source for data or patent rights, it may suffice to fulfill the requirements of Section 124.04(b), quoted above, insofar as the Department of Defense is concerned if:

(i) the agreement requires the second source to advise the primary source when he has knowledge of any purchase made or to be made from him by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government;

(ii) the primary source separately agrees with the Government that upon such advice to him from the second source or from the Government or otherwise as to any such a purchase or prospective purchase, he will negotiate with the Department concerned an appropriate reduction in his charges to the second source in recognition of any Government rights in patents or data; and

(iii) the agreement between the primary and second sources further provides that in the event of any such purchase and resulting reduction in charges, the second source shall pass on this reduction to the Government by giving the Government a corresponding reduction in the purchase price of the article or service.

(2) If the agreement provides that no charge is to be made to the second source for data or patent rights to the extent to which the Government has rights, the Department concerned shall:

(i) evaluate the acceptability of the provision before indicating its approval; or

(ii) explicitly condition its approval on the right to evaluate the acceptability of the provision at a later time.

(d) When there is a technical assistance agreement between the primary source and the Government related to the agreement between the primary and second sources that is under review, the latter agreement shall reflect the arrangements contemplated with respect thereto by the Government's technical assistance agreement with the primary source.

(e) Every agreement shall provide that any license rights transferred under the agreement are subject to existing rights of the Government.

(f) In connection with every agreement referred to in (b) above, a request shall be made to the primary source (i) to identify the patents, data, and other technical assistance to be provided to the second source by the primary source or any of his subcontractors, (ii) to identify any such patents and data in which, to the knowledge of the primary source, the Government may have rights, and (iii) to segregate the charges made to the second source for each such category or item of patents, data, and other technical assistance. Reviewing personnel shall verify this information or, where the primary source does not furnish it, obtain such information from Governmental sources so far as practicable.

(g) The Department concerned shall make it clear that its approval of any agreement does not necessarily recognize the propriety of the charges or the amounts thereof, or constitute approval of any of the business arrangements in the agreement, unless the Department expressly intends by its approval to commit itself to the fairness and reasonableness of a particular charge or charges. In any event, a disclaimer should be made to charges or business terms not affecting any purchase made by or for the Government or by others with funds derived through the Military Assistance Program or otherwise through the Government.

PATENTS, DATA, AND COPYRIGHTS

Part 4—Processing Licenses, Assignments, and Infringement Claims

9–401 Policy. Whenever a claim of infringement of privately owned rights in patented inventions or copyrighted works is asserted against any Department or Agency of the Department of Defense, all necessary steps shall be taken to investigate, and to settle administratively, deny, or otherwise dispose of such claim prior to suit against the United States. This Part 4 does not apply to licenses or assignments acquired by the Department of Defense under the Patent Rights clauses.

9–402 Statutes Pertaining to Administrative Claims of Infringement. Statutes pertaining to administrative claims of infringement in the Department of Defense include the following: the Foreign Assistance Act of 1961, 22 U.S.C. 2356 (formerly the Mutual Security Acts of 1951 and 1954); the Invention Secrecy Act, 35 U.S.C. 181–188; 10 U.S.C. 2386; 28 U.S.C. 1498; and 35 U.S.C. 286.

9–403 Claims for Copyright Infringement. The procedures set forth herein will be followed, where applicable, in copyright infringement claims.

9–404 Requirements for Filing an Administrative Claim for Patent Infringement.

(a) A patent infringement claim for compensation, asserted against the United States under any of the applicable statutes cited in 9–402, must be actually communicated to and received by a Department, agency, organization, office, or field establishment within the Department of Defense. Claims must be in writing and should include the following:

- (i) an allegation of infringement;
- (ii) a request for compensation, either expressed or implied;
- (iii) a citation of the patent or patents alleged to be infringed;
- (iv) a sufficient designation of the alleged infringing item or process to permit identification, giving the military or commercial designation, if known, to the claimant;
- (v) a designation of at least one claim of each patent alleged to be infringed; or
- (vi) as an alternative to (iv) and (v) above, a certification that the claimant has made a bona fide attempt to determine the item or process which is alleged to infringe, but was unable to do so, giving reasons, and stating a reasonable basis for his belief that his patent or patents are being infringed.

(b) In addition to the information listed in (a) above, the following material and information is generally necessary in the course of processing a claim of patent infringement. Claimants are encouraged to furnish this information at the time of filing a claim to permit the most expeditious processing and settlement of the claim.

- (i) A copy of the asserted patent(s) and identification of all claims of the patent alleged to be infringed.
- (ii) Identification of all procurements known to claimant which involve the alleged infringing item or process, including the identity of the vendor or contractor and the Government procuring activity.

(iii) A detailed identification of the accused article or process, particularly where the article or process relates to a component or subcomponent of the item procured, an element by element comparison of the representative claims with the accused article or process. If available, this identification should include documentation and drawings to illustrate the accused article or process in suitable detail to enable verification of the infringement comparison.

(iv) Names and addresses of all past and present licensees under the patent(s), and copies of all license agreements and releases involving the patent(s).

(v) A brief description of all litigation in which the patent(s) has been or is now involved, and the present status thereof.

(vi) A list of all persons to whom notices of infringement have been sent, including all departments and agencies of the Government, and a statement of the ultimate disposition of each.

(vii) A description of Government employment or military service, if any, by the inventor and/or patent owner.

(viii) A list of all Government contracts under which the inventor, patent owner, or anyone in privity with him performed work relating to the patented subject matter.

(ix) Evidence of title to the patent(s) alleged to be infringed or other right to make the claim.

(x) A copy of the Patent Office file of each patent if available to claimant.

(xi) Pertinent prior art known to claimant, not contained in the Patent Office file, particularly publications and foreign art.

In addition to the foregoing, if claimant can provide a statement that the investigation may be limited to the specifically identified accused articles or processes, or to a specific procurement, it may materially expedite determination of the claim.

(c) Any Department receiving an allegation of patent infringement which meets the requirements of this paragraph shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgment thereof.

(d) If a communication alleging patent infringement is received which does not meet the requirements set forth above, the sender shall be advised in writing:

(i) that his claim for infringement has not been satisfactorily presented; and

(ii) of the elements considered necessary to establish a claim.

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*For the Department of the Army, Chief, Patents Division, Office of The Judge Advocate General; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of The Judge Advocate General; for the Defense Supply Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

(e) A communication making a proffer of a license in which no infringement is alleged shall not be considered as a claim for infringement.

9–405 Indirect Notice of Patent Infringement Claims.

(a) A communication by a patent owner to a Department of Defense contractor alleging that the contractor has committed acts of infringement in performance of a Government contract shall not be considered a claim within the meaning of 9–404 until it meets the requirements specified therein.

(b) Any Department receiving an allegation of patent infringement which meets the requirements of 9–404 shall acknowledge the same and supply the other Departments* which may have an interest therein with a copy of such communication and the acknowledgement thereof.

(c) If a communication covering an infringement claim or notice which does not meet the requirements of 9–404(a) is received from a contractor, the patent owner shall be advised in writing as covered by the instructions of 9–404(d).

9–406 Investigation and Administrative Disposition of Claims. An investigation and administrative determination (denial or settlement) of each claim shall be made in accordance with instructions and procedures established by each Department, subject to the following:

(i) When the procurement responsibility for the alleged infringing item or process is assigned to a single Department or only one Department is the purchaser of the alleged infringing item or process, and the funds of that Department only are to be charged in the settlement of the claim, that Department shall have the sole responsibility for the investigation and administrative determination of the claim and for the execution of any agreement in settlement of the claim. Where, however, funds of another Department are to be charged, in whole or in part, the approval of such Department shall be obtained as required by 5–1102. Any agreement in settlement of the claim, approved pursuant to 5–1102, shall be executed by each of the Departments concerned.

(ii) When two or more Departments are the respective purchasers of alleged infringing items or processes and the funds of those Departments are to be charged in the settlement of the claim, the investigation and administrative determination shall be the responsibility of the Department having the predominant financial interest in the claim or of the Department or Departments as jointly agreed upon by the Departments concerned. The Department responsible for negotiation shall, throughout the negotiation, coordinate with the other Departments concerned and keep them advised of the status of the negotiation. Any agreement in the settlement of the claim shall be executed by each Department concerned.

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*For the Department of the Army, Chief, Patents Division, Office of The Judge Advocate General; for the Department of the Navy, The Patent Counsel for Navy, Office of Naval Research; for the Department of the Air Force, Chief, Patents Division, Office of The Judge Advocate General; for the Defense Supply Agency, The Office of Counsel; for the National Security Agency, the General Counsel; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

9–407 Notification and Disclosure to Claimants. When a claim is denied, the Department responsible for the administrative determination of the claim shall so notify the claimant or his authorized representative and provide the claimant a reasonable rationale of the basis for denying the claim. Disclosure of information or the rationale referred to above shall be subject to applicable statutes, regulations, and directives pertaining to security, access to official records, and the rights of others.

9–408 Settlement of Indemnified Claims. Settlement of claims involving payment for past infringement shall not be made without the consent of, and equitable contribution by, each indemnifying contractor involved, unless such settlement is determined to be in the best interests of the Government and is coordinated with the Department of Justice with a view to preserving any rights of the Government against the contractors involved. If consent of and equitable contribution by the contractors are obtained, the settlement need not be coordinated with the Department of Justice.

9–409 Patent Releases, License Agreements, and Assignments. This paragraph contains clauses for use in patent release and settlement agreements, license agreements, and assignments, executed by the Government, under which the Government acquires rights.

9–409.1 *Required Clauses.* Minor modifications of language (*e.g.*, pluralization of "Secretary" or "Contracting Officer") in multidepartmental agreements may be made if necessary.

(a) *Officials Not To Benefit.* Insert the clause in 7–103.19.

(b) *Covenant Against Contingent Fees.* Insert the clause in 7–103.20.

(c) *Gratuities.* Insert the clause in 7–104.16.

(d) *Assignment of Claims.* Insert the clause in 7–103.8.

(e) *Disputes.* In accordance with the provisions of 7–103.12, insert the appropriate clause set forth therein.

(f) *Non-Estoppel.*

NON-ESTOPPEL (OCT. 1966)

The Government reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this contract.

9–409.2 *Clauses To Be Used When Applicable.*

(a) *Release of Past Infringement.* The following clause is an example which may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel.* (*See footnotes at end of clause*)

RELEASE OF PAST INFRINGEMENT

The Contractor hereby releases each and every claim and demand which he now has or may hereafter have against the Government for the manufacture or use by or for the Government, prior to the effective date of this contract, of any inventions covered by (i) any of the patents and applications for patent identified in this contract, [and (ii) any other patent or application for patent owned or hereafter acquired by him, insofar as and only to the extent that such other patent or patent application covers the manufacture, use, or disposition of (description of subject matter).]**

*For the Department of the Army: Chief, Patents Division, Office of The Judge Advocate General, for the Department of the Air Force: Chief, Patents Division, Office of The Judge Advocate General; for the Defense Supply Agency. The Patent Counsel; for the Department of the Navy, the Patent Counsel for Navy, Office of Naval Research; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

**Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

(b) *Readjustment of Payments*. The following clause shall be inserted in contracts providing for payment of a running royalty:

READJUSTMENT OF PAYMENTS (OCT 1966)

(a) If any license, under substantially the same patents and authorizing substantially the same acts which are authorized under this contract, has been or shall hereafter be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this contract after the date such more favorable terms become effective, and the Contractor shall promptly notify the Secretary in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as it arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope or validity of such claims; *provided*, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this contract shall be interpreted in conformity with the final decision rendered on such appeal.

(End of clause)

(c) *Termination*. The following clause is an example for use in contracts providing for the payment of a running royalty. This clause may be modified or omitted as appropriate for particular circumstances, but only upon the advice of cognizant patent or legal counsel.*

*For the Department of the Army: Chief, Patents Division, Office of The Judge Advocate General; for the Department of the Air Force: Chief, Patents Division, Office of The Judge Advocate General; for the Defense Supply Agency. The Patent Counsel; for the Department of the Navy, the Patent Counsel for Navy, Office of Naval Research; for the Defense Communications Agency, The Counsel; for the Defense Nuclear Agency, The General Counsel; and for the Defense Mapping Agency, The Counsel.

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TERMINATION

Notwithstanding any other provision of this contract, the Government shall have the right to terminate the within license, in whole or in part, by giving the Contractor not less than thirty (30) days notice in writing of the date such termination is to be effective; *provided*, however, that such termination shall not affect the obligation of the Government to pay royalties which have accrued prior to the effective date of such termination.

(End of clause)

9–409.3 *Additional Clauses—Contracts Except Running Royalty Contracts.* The following clauses are examples for use in patent release and settlement agreements, and license agreements not providing for payment by the Government of a running royalty.

(a) *License Grant.*

LICENSE GRANT

(a) The Contractor hereby grants to the Government an irrevocable, nonexclusive, nontransferable, and paid up license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division or continuation thereof, to practice by or cause to be practiced for the Government throughout the world, any and all of the inventions thereunder, in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ....Date........................

Application Serial No. .... Filing Date ....

together with corresponding foreign patents and foreign applications for patents, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

(b) *License Term.* One of the following clauses may be used as appropriate.

(ALTERNATE A)

LICENSE TERM

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to in such "License Grant" clause.

(End of clause)

(ALTERNATE B)

LICENSE TERM

The license hereby granted shall terminate on the — day of .... 19—; *provided*, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

(End of clause)

9–409.4 *Additional Clauses—Contracts Providing for Payment of a Running Royalty.* The clauses set forth below are examples which may be used in patent release and settlement agreements, and license agreements, when it is desired to cover the subject matter thereof and the contract provides for payment of a running royalty.

(a) *License Grant.* No Department shall be obligated to pay royalties unless the contract is signed on behalf of such Department. Accordingly, the following License Grant clause should be limited to the practice of the invention by or for the signatory Department or Departments:

LICENSE GRANT

(a) The Contractor hereby grants to the Government, as represented by the Secretary of ...., an irrevocable, nonexclusive, nontransferable license under the following patents, applications for patent, and any patents granted on such applications, and under any patents which may issue as the result of any reissue, division, or continuation thereunder to practice by, or cause to be practiced for the Department of ...., throughout the world, any and all of the inventions thereunder in the manufacture and use of any article or material, in the use of any method or process, and in the disposition of any article or material in accordance with law:

U.S. Patent No. ....Date........................

Application Serial No. .... Filing Date ....

together with corresponding foreign patents and foreign applications for patent, insofar as the Contractor has the right to grant licenses thereunder without incurring an obligation to pay royalties or other compensation to others solely on account of such grant.

(b) No rights are granted or implied by the agreement under any other patents other than as provided above or by operation of law.

(c) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(End of clause)

(b) *License Term.* The following clause is a sample form for expressing the license term.

LICENSE TERM

The license hereby granted shall remain in full force and effect for the full term of each of the patents referred to in the "License Grant" clause of this contract and any and all patents hereafter issued on applications for patent referred to above unless sooner terminated as elsewhere herein provided.

(c) *Computation of Royalties.* The following clause, providing for the computation of royalties, may be of varying scope depending upon the nature of the royalty bearing article, the volume of procurement, and the type of contract pursuant to which the procurement is to be accomplished.

COMPUTATION OF ROYALTIES

Subject to the conditions hereinafter stated, royalties shall accrue to the Contractor under this agreement on all articles or materials embodying, or manufactured by the use of, any or all inventions claimed under any unexpired United States patent licensed herein, upon acceptance thereof by the Department of ...., at the rate of [........ percent of the net selling price of such articles or materials] [(*amount*) per (*name of item*)]* whether manufactured by the Government or procured under a fixed price contract, and at the rate of (*amount*) per (*name of item*) acquired or manufactured by a Contractor performing under a cost-reimbursement contract. With respect to such articles or materials made by the Department of ...., "net selling price," as used in this paragraph, means the actual cost of direct labor and materials without allowance for overhead and supervision.

(End of clause)

*Use bracketed matter as appropriate.

(d) *Reporting and Payment of Royalties.*

(1) The contract should contain a provision specifying the office designated within the specific Department involved to make any necessary reports to the contractor of the extent of use of the licensed subject matter by the entire Department, and such office shall be charged with the responsibility of obtaining from all procuring offices of that Department the information necessary to make the required reports and corresponding vouchers necessary to make the required payments. The following clause is a sample for expressing reporting and payment of royalties requirements:

REPORTING AND PAYMENT OF ROYALTIES

(a) The (*procuring office*) shall, on or before the sixtieth (60th) day next following the end of each yearly* period ending .... during which royalties have accrued under this license, deliver to the Contractor, subject to military security regulations, a report in writing furnishing necessary information relative to royalties which have accrued under this contract.

(b) Royalties which have accrued under this contract during the yearly* period ending .... shall be paid to the Contractor (if appropriations therefor are available or become available) within sixty (60) days next following the receipt of a voucher from the Contractor submitted in accordance with the report referred to in (a) of this clause; *provided*, that the Government shall not be obligated to pay, in respect of any such yearly period, on account of the combined royalties accruing under this contract directly and under any separate licenses granted pursuant to the "License to Other Government Agencies" clause (if any) of this contract, an amount greater than .... ($........................) dollars; and if such combined royalties exceed the said maximum yearly obligation, each department or agency shall pay a pro rata share of the said maximum yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(End of clause)

*The frequency, date, and length of reporting periods should be selected as appropriate to the particular circumstances of the contract.

(2) Where more than one Department or Government Agency is licensed and there is a ceiling on the royalties payable in any reporting period, the licensing Departments or Agencies shall coordinate with respect to the pro rata share of royalties to be paid by each.

(e) *License to Other Government Agencies.* When it is intended that a license on the same terms and conditions be available to other departments and agencies of the Government, the following clause is an example which may be used:

LICENSE TO OTHER GOVERNMENT AGENCIES

The Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in the "License Grant" clause of this contract, on the same terms and conditions as appear in this license contract, to any other department or agency of the Government at any time on receipt of a written request for such a license from such department or agency; *provided*, however, that as to royalties which accrue under such separate licenses, reports and payments shall be made directly to the Contractor by each such other department or agency pursuant to the terms of such separate licenses. The Contractor shall notify the Licensee hereunder promptly upon receipt of any request for license hereunder.

(End of clause)

9–410 Assignments.

(a) The following clause is an example which may be used in contracts of assignment of patent rights to the Government:

ASSIGNMENT

The Contractor hereby conveys to the Government, as represented by the Secretary of ...., the entire right, title, and interest in and to the following patents (and applications for patent), in and to the inventions thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore accrued, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patents (and to the full end of the terms of all patents which may be granted upon said applications for patent, or upon any division, continuation-in-part or continuation thereof):

U.S. Patent No. .... *Date*.................... *Name of Inventor* ....

U.S. Application Serial No. .... *Filing Date* .... *Name of Inventor*....................

together with corresponding foreign patents and applications for patent insofar as the Contractor has the right to assign the same.

(End of clause)

(b) To facilitate proof of contracts of assignments, the acknowledgement of the contractor should be executed before a notary public or other officer authorized to administer oaths. (35 U.S.C. 261)

9–411 Procurement of Rights in Inventions, Patents and Copyrights. Even though no infringement has occurred or been alleged, it is the policy of the Department of Defense to procure rights under patents, patent applications, and copyrights whenever it is in the Government's interest to do so and the desired rights can be obtained at a fair price. The required and suggested clauses in 9–409 and 9–410 shall be required and suggested clauses, respectively, for license agreements and assignments made under this paragraph. The instructions in 9–409 and 9–410 concerning the applicability and use of those clauses shall be followed insofar as they are pertinent.

9–412 Contract Format. The following format, appropriately modified where necessary, may be used for contracts of release, license, or assignment:

.... (Contract No.)

PATENT LICENSE AND RELEASE CONTRACT

THIS CONTRACT is effective as of the — day of .... 19—, between the UNITED STATES OF AMERICA (hereinafter called the Government), and .... (hereinafter called the Contractor), [a corporation organized and existing under the laws of the State of

........................,) (a partnership consisting of ....,) (an individual trading as ....,)] of the City of .... in the State of ....

WHEREAS, Contractor warrants that he has the right to grant the within license and release, and the Government desires to procure the same, and

WHEREAS, this contract is authorized by law, including 10 U.S.C. 2386,

NOW THEREFORE, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

ARTICLE 1. License Grant.*

(Insert the clause in 9–409.3(a) for a paid up license, or the clause in 9–409.4(a) for a license on a running royalty basis.)

ARTICLE 2. License Term.*

(Insert the appropriate alternative clause in 9–409.3(b) for a paid up license, or the clause in 9–409.4(b) for a license on a running royalty basis.)

ARTICLE 3. Release of Past Infringement.

(Insert the clause in 9–409.2(a)).

ARTICLE 4. Non-Estoppel.

(Insert the clause in 9–409.1(f)).

ARTICLE 5. Payment.

The Contractor shall be paid the sum of .... Dollars ($..................) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause in 9–409.4(c) in accordance with the instructions therein, and also the clause as specified in 9–409.2(b) and 9–409.4(d) and (e)).

ARTICLE 6. Officials Not to Benefit.

(Insert the clause in 7–103.19.)

ARTICLE 7. Covenant Against Contingent Fees.

(Insert the clause in 7–103.20.)

ARTICLE 8. Assignment of Claims.

(Insert the clause in 7–103.8.)

ARTICLE 9. Gratuities.

(Insert the clause in 7–104.16.)

ARTICLE 10. Disputes.

(Insert the clause in 7–103.12.)

ARTICLE 11. Successors and Assignees.

This Agreement shall be binding upon the Contractor, his successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA
By..........................
Date ....
(*Signature and Title of Contractor*) ....
By....................................
Date ....

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*If only a release is procured, delete this article; if an assignment is procured, use the clause in 9–410.

**When the contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

9–413 Recordation. Executive Order No. 9424 of 18 February 1944 requires all executive Departments and agencies of the Government to forward through appropriate channels to the Commissioner of Patents and Trademarks, for recording, all Government interests in patents or applications for patents.

Part 5—Acquisition of Technical Data and Computer Software

9-500 Scope of Part. This part applies to the acquisition of technical data and computer software. The acquisition of rights in technical data is treated in Part 2 and the acquisition of rights in computer software is treated in Part 6 of this Section.

9-501 Definitions.

(a) *Data*. See 9-201(a).

(b) *Technical Data*. See 9-201(b).

(c) *Computer Software*. See 9-601(d).

9-502 Acquisition of Technical Data and Computer Software.

(a) Technical data and computer software is expensive to prepare in the required form and to maintain and update. Every effort, therefore, should be made to avoid placing a requirement upon a contractor to prepare and deliver data or software unless the need is positively determined. By delaying the delivery of data or software until needed for a specific purpose, storage requirements within DoD of technical data and computer software items are reduced, the handling of data and software superseded by updated versions is greatly decreased and the purchase of data or software which may become obsolete by pending hardware changes is minimized. Economy in the purchase of data and software and the probability of greater currency may be achieved by deferring the delivery, and in some cases deferring the ordering, of data or software until an operational need is determined, or until stability of design or production is reached during contract performance. The application of the deferred delivery and deferred ordering principles, as explained further, should be made only after a careful evaluation on a case-by-case basis of the anticipated operational uses of technical data or computer software and any other relevant considerations. When it is expected that technical data or computer software may be required, but the precise need at time of contracting has not been determined, deferred ordering will be used to avoid the cost of preparation but allow the ordering of the data or software at some point downstream in contract performance should the need arise. When the need but not the time of delivery can be determined, deferred delivery will be used. When deferred delivery is used, it is expected that the contractor will price the data and software at the time of contracting and incur the cost of preparation prior to the call for delivery. Therefore, it is important that deferred ordering rather than deferred delivery be used where the need for data or software is doubtful. Whether the technique of deferred delivery or deferred ordering is used, the receipt of data or software by the Government should be scheduled to be in phase with a specific and planned use of the technical data or software.

(b) *Deferred delivery* refers to the practice of timing the delivery of technical data or computer software specified in a contract to a firm, operational need. This technique should be used only when a data or software requirement can be determined at the time of contracting and therefore is specified on the DD Form 1423, but the time or place of delivery is not firm. The dates for the delivery of data and software should be scheduled to coincide with the needs of the Government. The contractor, however, must be notified sufficiently in advance of a delivery date to enable him to provide the data or software in specified form on time. Thus, in any contract the Government may defer the delivery of all or any portion of the technical data or computer software specified in the contract until actual need can be economically determined. The Government may require the contractor to deliver any such data or software, or portions thereof, at any time during the performance of the contract or within two years from either acceptance of all items (other than data and software) under the contract or termination of the contract, whichever is later. However, the contractor's obligation to deliver technical data pertaining to any item obtained from a subcontractor shall cease two years after the date on which he accepts the item. The Government's rights in deferred delivery data and software are as prescribed in the contract under which the data or software is to be delivered. When the delivery of technical data or computer software is to be deferred, the *Deferred Delivery of Technical Data and Computer Software* clause of 7–104.9(d) shall be included in the contract.

(c) *Deferred ordering* refers to delaying the ordering of technical data or computer software generated in the performance of the contract until such time as a need can be established and the requirements can be specifically identified for delivery under the contract. In many instances it is difficult to determine during solicitation and negotiation stages exactly what data or software is needed. The information available at these stages may suggest the need for some data or software but further information may be needed to identify the specific data or software items. In such situations, and also when it is desired to delay the ordering of technical data or computer software until such time as the production design becomes firm, the *Deferred Ordering* clause is appropriate. The requirement for technical data or computer software under these circumstances is not listed on the DD Form 1423 until the specific need is determined. Whenever the *Deferred Ordering* clause is used, the clause entitled *Rights in Technical Data and Computer Software* (see 9–203(b)) shall also be included. When data or software items are ordered, the delivery dates shall be negotiated and the contractor shall be compensated for converting the data or software into the prescribed form, for reproduction and delivery to the Government. Compensation to the contractor shall not include the cost of generating such data or software since it was generated in the performance of work for which the Government has already agreed to pay the contractor.

9–503 Identification of Technical Data.

(a) The contractor is required to include on technical data delivered under a contract his name, the contract number and the name of any subcontractor who generated any part of such data. If technical data were marked, for example, in the manner permitted by paragraph (b)(2) of the *Rights in Technical Data and Computer Software* clause in 7–104.9(a), such marked data would comply with the requirements of the clause identified in (b) below and need not be further identified pursuant to this clause. The marking requirement provides the basis for identifying the rights of the contractor and the Government in technical data.

(b) To insure that technical data is fully identified as to its source, the *Identification of Technical Data* clause in 7–104.9(l) shall be made a part of any contract under which technical data is to be delivered.

9-504 Technical Data—Withholding of Payment.

(a) Timely delivery of data is particularly important to the operation and maintenance of equipment as well as competitive procurement of follow-on quantities of contract items and of items broken out from an assembly or equipment. The clause in 7-104.9(h) is designed to assure timely delivery of data. The clause permits a withholding not exceeding ten percent (10%) of the total contract price or amount, but the Contracting Officer may specify a lesser amount in the contract if circumstances warrant. A case-by-case determination as to the amount to be withheld shall be made by the Contracting Officer after considering the estimated value of the data to the Government. No amount shall be withheld when the failure to make timely delivery arises out of causes beyond the control and without the fault or negligence of the contractor.

(b) Withholding action under paragraph (b) of the clause should be taken only when the contractor has failed to make timely deliveries of acceptable data on other contracts or if the Contracting Officer has information which would cause him to anticipate late delivery of data or delivery of deficient data. The amount of withholding should be based on the estimated value of the data to the Government.

9-505 Data Requirements. The DD Form 1423 need not be used to list data or software requirements in the circumstances set forth in 7-104.9(n)(2). (See 16-815.)

PATENTS, DATA, AND COPYRIGHTS

Part 6—Rights in Computer Software Acquired Under Contract

9-600 Scope of Part

(a) This Part sets forth the policies, instructions, and procedures pertaining to the acquisition of rights to use, duplicate, and disclose computer software. For the purpose of this Part, computer software consists of computer programs and computer data bases. This Part 6 shall apply to computer programs and computer data bases exclusively. Computer software documentation relating to a computer program or a computer data base is "*technical data*" to which Part 2 is applicable.

(b) This Part relates only to the rights to be acquired in software and not to the establishment of requirements. For information concerning requirements for and the acquisition of computer software, see Part 5 and the following:

DoD Directive 4105.55, "*Selection and Acquisition of Automatic Data Processing Resources*," May 19, 1972.

DoD Directive 5000.19-L, Volume II, "*Acquisition Management Systems and Data Requirements Control List*."

DoD Instruction 4105.65, "*Acquisition of Automatic Data Processing Computer Programs and Related Services*," June 29, 1970.

(c) Rights in computer software acquired under GSA authorized ADP Schedule Pricelist contracts are governed by the terms of those contracts.

9-601 Definitions. For the purpose of this Part, the following terms have the meanings indicated:

(a) *Data* - See 9-201(a).

(b) *Technical Data* - See 9-201(b).

(c) *Computer* - A data processing device capable of accepting data, performing prescribed operations on the data, and supplying the results of these operations; for example, a device that operates on discrete data by performing arithmetic and logic processes on the data, or a device that operates on analog data by performing physical processes on the data.

(d) *Computer Software* - Computer programs and computer data bases.

(e) *Computer Program* - A series of instructions or statements in a form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs, as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or be designed to satisfy the requirements of a particular user.

(f) *Computer Data Base* - A collection of data in a form capable of being processed and operated on by a computer.

(g) *Computer Software Documentation* - Technical data, including computer listings and printouts, in human-readable form which (i) documents the design or details of computer software, (ii) explains the capabilities of the software, or (iii) provides operating instructions for using the software to obtain desired results from a computer.

(h) *Unlimited Rights* - See 9-201(d).

(i) *Limited Rights* - See 9-201(c).

(j) *Restricted Rights* apply only to computer software, and include, as a minimum, the right to:

(i) use computer software with the computer for which or with which it was acquired, including use at any Government installation to which the computer may be transferred by the Government;

(ii) use computer software with a backup computer if the computer for which or with which it was acquired is inoperative;

(iii) copy computer programs for safekeeping (archives) or backup purposes; and

(iv) modify computer software, or combine it with other software, subject to the provision that those portions of the derivative software incorporating restricted rights software are subject to the same restricted rights;

and in addition, any other specific rights not inconsistent therewith listed or described in the contract or described in a license or agreement made a part of the contract.

(k) *Commercial Computer Software* - Computer software which is used regularly for other than Government purposes and is sold, licensed or leased in significant quantities to the general public at established market or catalog prices.

9-602 Policy.

(a) The Government shall have unlimited rights in:

(1) computer software resulting directly from or generated as part of the performance of experimental, developmental, or research work specified as an element of performance in a Government contract or subcontract;

(2) computer software required to be originated or developed under a Government contract, or generated as a necessary part of performing a contract;

(3) computer data bases, prepared under a Government contract, consisting of (i) information supplied by the Government, (ii) information in which the Government has unlimited rights, or (iii) information which is in the public domain;

(4) computer software prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished software; or

(5) computer software which is in the public domain or has been or is normally furnished by the contractor or subcontractor without restriction.

(b) When the Government has unlimited rights in computer software in the possession of a contractor, no payment will be made for rights of use of such software in performance of Government contracts or for the later delivery to the Government of such computer software, *provided* however, that the contractor shall be entitled to compensation for converting the software into the prescribed form for reproduction and delivery to the Government.

(c) It is Department of Defense policy to acquire only such rights to use, duplicate, and disclose computer software developed at private expense as are necessary to meet Government needs. Such rights should be designed to allow the Government flexibility while, at the same time, adequately preserving the rights of the contractor. Computer software developed at private expense may be purchased or leased. Restrictions may be negotiated with respect to the right of the Government to use, duplicate, or disclose computer programs or computer data bases developed at private expense. As a minimum, however, the Government shall have the rights in 9-601(j)(i) through (iv).

(d) Patented or copyrighted computer software will not be subject to any agreement prohibiting the Government from infringing a patent or copyright. Title 28, United States Code, Section 1498 provides that the Government is liable only for reasonable compensation for use of a patented invention or for infringement of copyright. However, see 9-411.

(e) When computer software is developed at private expense and acquired with restricted rights, the associated computer software documentation will be acquired with limited rights to the extent provided in Part 2 of this Section, and will not be used for preparing the same or similar computer software.

(f) Commercial computer software and related documentation developed at private expense may be leased, or a license to use may be purchased, by the Government subject to the restrictions in paragraph (b)(3)(B) of the clause in 7-104.9(a).

9-603 Procedures.

(a) Except as provided in 7-104.9(n)(2), any computer program or computer data base to be purchased under a contract shall be listed on the *Contract Data Requirements List* (DD Form 1423). Also, if a contract requires the conversion of data to machine-readable form, the editing or revision of existing programs or data bases, the writing of implementation programs, or the preparation of computer software documentation, the products of this work, if required to be delivered, shall be included on the DD Form 1423.

(b) The "*Rights in Technical Data and Computer Software*" clause in 7-104.9(a) shall be included in every contract under which computer software may be originated, developed, or delivered. That clause establishes the circumstances under which the Government secures unlimited rights in both technical data and computer software, limited rights in technical data, and restricted rights in computer software. In negotiated contracts where the clause in 7-104.9(a) is required, the provision in 7-2003.76 shall be included in the solicitation.

(c) Contracts under which computer software developed at private expense is procured or leased shall explicitly set forth the rights necessary to meet Government needs and restrictions applicable to the Government as to use, duplication and disclosure of the software. Thus, for example, such software may be needed, or the owner of such software will only sell or lease it, for specific or limited purposes such as for internal agency use, or for use in a specific activity, installation or service location. In any event, the contract must clearly define any restrictions on the right of the Government to use such computer software, but such restrictions will be acceptable only if they will permit the Government to fulfill the need for which such software is being procured. The recital of restrictions may be complete within itself or it may reference the contractor's license or other agreement setting forth restrictions. If referencing is employed, a copy of the license or agreement must be attached to the contract. The minimum rights of 9-602(c) are provided in the *Rights in Technical Data and Computer Software* clause, and need not be included in the recital.

(d) When computer software developed at private expense is modified or enhanced as a necessary part of performing a contract, only that portion of the resulting product in which the original product is recognizable will be deemed to be computer software developed at private expense to which restricted rights may attach.

(e) The scope of the restrictions on or, conversely, the scope of the use which the Government is permitted to make of such software shall be taken into account in determining the reasonableness of the contract price for the computer software.

9-604 Deviations. All requests for deviations from this Part 6 shall be submitted to the ASPR Committee in accordance with the procedures in 1-109.3.

9-605 Computer Software Subject to Restricted Rights.

(a) Because of the widely-varying restrictions which are likely to be encountered in the purchase or lease of computer software developed at private expense, a standard recital setting forth specific restrictions and rights suitable for all cases is not feasible. If the standard set of restrictions and rights set forth in 9-602(f) for commercial computer software is not appropriate, personnel are urged to consult counsel in any case in which the proposed contractor requests the Government to accept other restrictions on the use of such software.

(b) To apprise user personnel of the restrictions on use, duplication or disclosure agreed to by the Government with respect to such software sold or leased to the Government, the contractor is required to place the following legend on such software:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to
restrictions stated in Contract No..............................
with .... (*Name of Contractor*).

For commercial computer software and documentation, the contract number may be omitted and replaced by "paragraph (b)(3)(B) of the Rights in Technical Data and Computer Software clause in DAR 7-104.9(a)", and the contractor's address added. The Government shall include the same restrictive markings on all its reproductions of the computer software unless the Government cancels such markings pursuant to the procedures in 9-606.

(c) A statement setting forth the restrictions imposed on the Government to use, duplicate, and disclose computer software subject to restricted rights is required to be prominently displayed in human-readable form in the computer software documentation. The reference to the Rights in Technical Data and Computer Software clause in the Restricted Rights Legend on commercial computer software and documentation satisfies this requirement.

(d) Except as provided in (b) above, computer programs, computer data bases, and computer software documentation delivered to the Government pursuant to a contract requirement must be identified with the number of the prime contract and the name of the contractor.

(e) All markings, (notice, legends, identifications, etc.) concerning restrictions on the use, duplication, or disclosure of computer software required or authorized by the terms of the contract under which delivery is made are required to be in human-readable form that can be readily and visually perceived and, in addition may be in machine-readable form as appropriate and feasible under the circumstances. Such markings shall be affixed by the contractor to the computer software prior to delivery of the software to the Government.

(f) The human-readable markings may be applied to card decks, magnetic tape reels, or disc packs. This may be, in the case of a card deck, on a notice card even though the cards of the deck do not contain printed material; in the case of a card deck packaged in a container intended as a permanent receptacle for the cards, on the container; in the case of a tape, on the tape reel or on the surface of the leader and trailer of the tape; and in the case of a disc pack, on the hub of the disc.

9-606 Unmarked or Improperly Marked Computer Software.

(a) No restrictive markings shall be placed upon computer software unless restrictions are set forth in the contract prior to delivery of the software. Copyright notices as specified in Title 17, United States Code, Sections 401 and 402 are not considered "restrictive markings". The Government may require the contractor to identify the contractual provision setting forth such restrictions before accepting computer software with restrictive markings. If computer software is received with restrictive markings, and there is a question whether it is authorized by the contract to be furnished with restricted rights, it shall be used subject to the asserted restrictions pending written inquiry to the contractor. If no response to an inquiry has been received within 60 days, or if the response fails to identify the restrictions set forth in the contract, the cognizant Government personnel shall cancel or ignore the markings, notify the contractor accordingly in writing, and thereafter use the software with unlimited rights.

(b) Computer software received without a restrictive legend shall be deemed to have been furnished with unlimited rights. However, the contractor may request permission to place restrictive markings on such software at his own expense, and the Government may so permit, if the contractor establishes that the markings are authorized by the contract and demonstrates that the omission was inadvertent. Failure of the contractor to mark such computer software prior to delivery to the Government shall relieve the Government of liability for any use, duplication or disclosure of such computer software.

(c) If computer software authorized by the contract to be furnished with restrictions is received with restrictive markings not in the form prescribed by the contract, the software should be used in accordance with the restrictions provided for in the contract and the contractor shall be required by written notice to correct the markings to conform with those specified in the contract. If the contractor fails to correct the markings within 60 days after notice, Government personnel may correct the markings, and so notify the contractor.

9-607 Contracts With Foreign Sources to be Performed Outside the United States. (See 9-206.)

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SECTION X

BONDS, INSURANCE, AND INDEMNIFICATION

PART 1—Bonds

10–101 Definitions. As used in this Part 1 of Section X, the following terms shall have the meanings set forth below:

10–101.1 *Advance payment bond* means a bond which secures the performance and the fulfillment of a contractual provision for the making of advance payments.

10–101.2 *Annual bid bond* means a single bond (in lieu of separate bid bonds), without limitation as to penal amount, which secures all bids (on other than construction contracts) requiring bonds submitted by a contractor during a specific fiscal year of the Government in response to formal advertising.

10–101.3 *Annual performance bond* means a single bond (in lieu of separate performance bonds for each contract) which secures the performance of contracts (other than construction contracts) which require bonds and are entered into by a contractor during a specific fiscal year of the Government. Such bonds may be in different forms, including the following three: the first providing for penal sums separately applicable to each covered contract, regardless of the total amount of covered contracts; the second providing a gross penal sum cumulatively applicable to the total amount of all covered contracts but without a separate limit applicable to each contract; and the third providing both, separate contract and cumulative limits.

10–101.4 *Bid guarantee* means a form of security accompanying a bid or proposal as assurance that the bidder (i) will not withdraw his bid within the period specified therein for acceptance, and (ii) will execute a written contract and furnish such bonds as may be required within the period specified in the bid (unless a longer period is allowed) after receipt of the specified forms.

10–101.5 *Consent of surety* means an acknowledgement by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

10–101.6 *Construction contract or subcontract* means any contract or subcontract for the construction as defined in 18–101.1

10–101.7 *Fidelity bond* means a bond which secures an employer up to an amount stated in the bond for losses caused by dishonesty on the part of an employee. A blanket fidelity bond covers all employees, except those expressly excluded by written endorsement on the bond.

10–101.8 *Forgery bond or policy* (Depositors Form) means a bond or policy which secures the person or persons named therein up to the amount stated for losses caused by the forging or altering of a check, draft, or similar instrument issued by or purporting to have been issued by any of the insureds, and for losses resulting from a check or draft having been obtained from the insureds through impersonation.

10–101.9 *Reserved.*

10-101.10 *Payment bond* means a bond which is executed in connection with a contract and which secures the payment of all persons supplying labor and material in the prosecution of the work provided for in the contract.

10-101.11 *Penal sum or amount* means the dollar amount shown in a bond and represents the maximum payment for which the surety is obligated.

10-101.12 *Performance bond* means a bond which is executed in connection with a contract and which secures the performance and fulfillment of all the undertakings, covenants, terms, conditions, and agreements contained in the contract.

10-102 Bid Guarantees.

10-102.1 *Applicability*. This paragraph 10-102 applies to both negotiated and formally advertised procurements. The term "bid" includes "proposal."

10-102.2 *Limitations*. Bid guarantees shall not be required unless the solicitation specifies that the contract must be supported by a performance bond or performance and payment bonds. In connection with supply and services contracts, the bidder may furnish either an individual bid bond (Standard Form 24) or an annual bid bond (Standard Form 34). A bid guarantee will not be requested unless the bid exceeds $25,000 (see 10-102.4(a)(i)). In connection with construction contracts, only the individual bid bond will be accepted.

10-102.3 *Amount Required*.

(a) When a bid guarantee is deemed necessary, the contracting officer shall determine the percentage (or amount) which in his best judgment, when applied to the bid price, will produce a bid guarantee amount adequate to protect the Government from loss should the successful bidder fail to execute such further contractual documents and bonds as may be required. The percentage determined shall be not less than 20 percent of the bid price except that the maximum amount required shall be $3,000,000.

(b) The penal sum of a bid bond may be expressed as a specified percentage of the bid price. In this fashion, the bid bond may be written by the surety before the bidder's final determination of his bid price.

10-102.4 *Solicitation Provisions*.

(a) When a bid guarantee is determined to be necessary, the solicitation shall contain (i) a statement requiring that a bid guarantee be submitted with any bid in excess of $25,000 and containing such details as are necessary to enable bidders to determine the proper amount of bid guarantee to be submitted; and (ii) the provision in 7-2003.25.

(b) The requirement for the provision in 7-2003.25 is met when Standard Form 22 (Instructions to Bidders (Construction Contracts)) is used in accordance with 16-401.1(v) and 16-401.2(a).

(c) The provision required by (a)(ii) above may be appropriately modified in negotiated contracts.

10-102.5 *Noncompliance with Bid Guarantee Requirements*. Absent either (i) the existence of one of the following situations or (ii) a written determination by the contracting officer that, notwithstanding the existence of one of the following situations, acceptance of the bid would be detrimental to the Government's best interests, noncompliance with a solicitation requirement that the bid be supported by a bid guarantee will require rejection of the bid (See 2-404.2(h)):

(i) when only a single bid is received (in such cases the purchasing office may or may not require the furnishing of the bid guarantee before award);

(ii) when the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid;

(iii) when the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids in relation to the bid price for the maximum quantity bid upon, is sufficient in relation to the bid price for a quantity for which the bidder is otherwise eligible for award (and in that event any award to him shall be limited to the quantity covered by the bid guarantee);

(iv) when the bid guarantee is received late and the late receipt may be waived under the rules established in 2–303 for consideration of late bids;

(v) when an otherwise adequate bid guarantee becomes inadequate as a result of the correction of a mistake in bid under 2–406, if the bidder will increase the amount of the bid guarantee in proportion to the authorized bid correction; and

(vi) when a telegraphic modification of the bid is received without a corresponding modification of the bid guarantee, *provided* the bid modification expressly refers to the bid previously submitted in response to the invitation for bids and the bid guarantee satisfies the above criteria.

10–103 Performance and Payment Bonds for Construction Contracts.

10–103.1 *Performance Bonds.*

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a–270e), in connection with any construction contract exceeding $25,000 in amount except as provided in 10–103.3 below, a performance bond shall be required in a penal amount deemed adequate by the contracting officer for the protection of the Government. Generally, the penal amount of each performance bond shall be 100 percent of the contract price at the time of award. But where the contracting officer finds that to require a 100 percent performance bond would be disadvantageous to the Government, he may prescribe a lesser penal amount, which should normally be not less than 50% of the original contract price, and in all cases no less than the amount of the payment bond. The performance bond shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished.

(b) Additional performance bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to (a) above if:

(i) the modification is for new or additional work which is beyond the scope of the existing contract; or

(ii) the modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the bond protection should generally be increased so that the total performance bond protection is 100 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications; *provided*, that lesser penal amounts may be authorized by the contracting officer as indicated in (a) above. The increased penal amount may be secured either by increasing the bond protection provided by the existing surety or sureties (the format set forth in 10-111.1 may be used when an additional bond is obtained from the original surety), or by obtaining an additional performance bond from a new surety; but see 10-111.2 with respect to requiring consent of surety.

(c) In making allowance for bond premium in equitable adjustments or other price modifications affecting contracts, the allowance shall not be more than that calculated at the rate paid for the bonds furnished under the original contract.

10-103.2 *Payment Bonds.*

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a-270e), in connection with any construction contract exceeding $25,000 in amount, except as provided in 10-103.3 below, a payment bond shall be required in a penal amount as follows:

- (i) when the contract price is not more than $1,000,000, the penal sum shall be 50 percent of the contract price;
- (ii) when the contract price is more than $1,000,000 but not more than $5,000,000, the penal sum shall be 40 percent of the contract price; and
- (iii) when the contract price is more than $5,000,000, the penal sum shall be $2,500,000.

(b) Additional payment bond protection shall be required in connection with any modification effecting an increase in price under any contract for which a bond is required pursuant to (a) above if:

- (i) the modification is for new or additional work which is beyond the scope of the existing contract; or
- (ii) the modification is pursuant to an existing provision of the contract and is expected to increase the contract price by $50,000 or 25 percent of the basic contract price, whichever is less.

The penal amount of the additional bond protection should generally be such that the total payment bond protection is 50 percent of the contract price as revised by (i) the modification requiring such additional protection, and (ii) the aggregate of any previous modifications; *provided*, that when the contract price as so revised is more than $1,000,000 but not more than $5,000,000, the total payment bond protection shall be in a penal amount of 40 percent of the revised contract price; *provided further*, that when the contract price as so revised is more than $5,000,000, the total payment bond protection shall be in the penal amount of $2,500,000. The additional protection may be secured either by increasing the bond protection provided by the existing surety or sureties or by obtaining an additional payment bond from a new surety; but see 10-111.2 with respect to requiring consent of surety.

(c) In making allowance for bond premium in equitable adjustments or other price modifications affecting any contract, the allowance shall not be more than that calculated at the rate paid for the bonds furnished under the original contract.

10-103.3 *Waiver of Performance and Payment Bonds.*

(a) The requirement of a performance and payment bond has been waived for all cost-reimbursement type construction contracts. In unusual circumstances, either or both bonds may be required of a prime contractor, subject to approval by the Chief of the Purchasing Office. Contracting officers shall, however, require a cost-reimbursement type prime contractor to obtain performance and payment bonds for any fixed-price construction subcontract exceeding $25,000 in accordance with 10-104.1(b).

(b) A contracting officer may waive the requirement for performance and payment bonds for so much of the work under a contract as is to be performed in a foreign country, *provided* he finds that it is impracticable for the contractor to furnish such bonds.

10-103.4 *Furnishing Information to Subcontractors and Suppliers.*

(a) It is Department of Defense policy to furnish subcontractors or suppliers only general information with respect to the status of work and of payments made to prime contractors. Accordingly, subcontractors and suppliers may be furnished general information on such matters as the progress of the work, the accomplishment of payments as of certain dates, and the estimated percentage of completion.

(b) When a payment bond has been required, a subcontractor or supplier, after satisfying the contracting officer that he is a bona fide subcontractor or supplier and stating that he has not been paid for work performed or supplies delivered, may be furnished the name and address of the surety furnishing the required bonds on the contract in question.

10-103.5 *Requirements and Indefinite Quantity Contracts.* In requirements type contracts, for purposes of determination of the penal sum of bonds, the contract price will be deemed to be the price payable for the estimated quantity. In indefinite quantity contracts, the contract price will be deemed to be the price payable for the specified minimum quantity. When such estimated or minimum quantities are exceeded, 10-103.1(b) and 10-103.2(b) will be applied.

10-104 Performance and Payment Bonds for Contracts Other Than Construction Contracts.

10-104.1 *General.*

(a) Under Section 270e of the Miller Act (40 U.S.C. 270e) the provisions of the Act have been waived for any supply contracts covered by Sections a-d of the Act (40 U.S.C. 270a-d). Bonds required pursuant to 10-104 are bonds required pursuant to 10 U.S.C. 2381 or other general contracting authority of the Department of Defense, and not pursuant to the Miller Act.

(b) Generally, performance and payment bonds shall not be required in connection with contracts other than construction contracts, other than as provided in 10-104.2 and 10-104.3, except that for any fixed-price construction subcontract exceeding $25,000, a prime contractor who has not been required to furnish a payment bond shall be required to obtain a payment bond from his subcontractor, in favor of the prime contractor, in an amount sufficient to assure payment of suppliers of labor and materials. In such a case, a performance bond in an equal amount should also be obtained if available at no additional cost.

(c) Standard Form 25 (Performance Bond), Standard Form 35 (Annual Performance Bond) and DD Form 1673 (Payment Bond for Other Than Construction Contracts) are authorized for use for other than construction contracts. Payment bonds for other than construction contracts shall not be executed on Standard Form 25–A.

(d) Subcontract bonds shall not be executed on Standard Forms 25 and 25–A or on DD Form 1673. The forms set forth in 16–805(viii) and (ix) are authorized and may be adapted to fit specific cases.

(e) Performance and payment bonds shall not be required unless the solicitation requires such bonds, or the requirement of such bonds is in the interest of the Government, and not prejudicial to other bidders or offerors. When the solicitation requires such bonds, they shall not be waived except in the case of an otherwise acceptable bidder or offeror where such waiver will be favorable to the Government and the contract price will be reduced.

(f) When the requirement for performance and payment bonds is made by the terms of a contract, but the bonds are not furnished by the contractor within the time specified, the contracting officer shall notify the contractor that the contract will be terminated for default if the bonds are not furnished within the time specified in the contract clause providing for such termination (*e.g.*, 8–707, clause, par. (a)(ii)).

(g) When a bid guarantee is not required and a performance or payment bond is required as a condition precedent to the formation of the contract, but is not furnished within the time specified, the contracting officer shall if the making of the award can be delayed without prejudice to other bidders notify the bidder that if the bond is not furnished within 10 days (or such other period as the contracting officer may specify) after receipt of the notice, his bid will not be considered for award.

(h) When a contractor supports a contract with an annual performance bond, in a cumulative penal sum, the contracting officer shall notify the office to which the contractor has furnished such bond so that the amount of coverage required may be recorded against the penal sum of the bond.

(i) Requirements for additional bond or consent of surety in connection with contract modifications are prescribed in 10–111.

10–104.2 *Performance Bonds.*

(a) Performance bonds shall not be used as a substitute for determinations of contractor responsibility as required by Section I, Part 9. Subject to this general policy, performance bonds may be required in individual procurements when, consistent with the following criteria, the contracting officer determines the need therefor. Justification for any such requirement must be fully documented.

- (i) When the terms of the contract provide for the contractor to have the use of Government material, property or funds and further provide for the handling thereof by the contractor in a specified manner, a performance bond shall be required if needed to protect the Government's interests therein.
- (ii) When the circumstances applicable to a particular procurement are such that for financial reasons a performance bond is necessary to protect the interests of the Government, a performance bond shall be required. (See for example, 26–402(c) (iii).)

(b) Subject to the general policy stated in (a) above, determinations that performance bonds will be required in specified classes of cases (*e.g.*, for particular types of supplies or services) may be made (i) for the Army, by the Director and Deputy Director of Requirements and Procurement, Army Materiel Command, and by all Heads of Procuring Activities not subordinate to that command; (ii) for the Navy, by the Chief of Naval Material; (iii) for the Air Force, by the Director of Procurement Policy, DCS/S&L; (iv) for the Defense Supply Agency, by the Executive Director, Procurement and Production; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Nuclear Agency, by the Director; (vii) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); and for the Defense Mapping Agency, by the Staff Director of Logistics. A copy of each such determination covering a class of cases shall be forwarded to the Office of Assistant Secretary of Defense (Installations and Logistics) for information.

(c) Annual performance bonds may be used only in connection with contracts other than construction contracts. When such a bond in a cumulative penal sum is used and has been completely obligated by contracts in an appropriate amount equal to the penal sum thereof, an additional bond shall be obtained to cover additional contracts.

10-104.3 *Payment Bonds*. Generally, payment bonds for contracts other than construction may be required only if a performance bond is also required. If a performance bond is required, a payment bond should also be required if it can be obtained at no additional cost.

10-105 Other Types of Bonds.

10-105.1 *Advance Payment Bonds*. See E-413.

10-105.2 *Reserved.*

10-105.3 *Fidelity and Forgery Bonds.*

(a) Fidelity and forgery bonds are not generally required in any procurement. However, in connection with cost-reimbursement contracts for supplies, construction, or for operation of government-owned plants, such bonds may be required when necessary for the protection of the Government or the contractor, or when it is considered desirable to obtain the investigative and claims services of a surety company. Approval for requiring these bonds shall be obtained, (i) for the Army, by the Head of a Procuring Activity; (ii) for the Navy, by the Chief of Naval Material (MAT 0242); (iii) for the Air Force, by the Air Force Logistics Command (PPC); (iv) for the Defense Supply Agency, by the Head of a Procuring Activity; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (vii) for the Defense Nuclear Agency, by the Director; and (viii) for the Defense Mapping Agency, by the Staff Director of Logistics.

(b) When a fidelity bond is required, a Primary Commercial Blanket Bond or a Blanket Position Bond in the penal sum of $10,000 will ordinarily be considered adequate. The Surety Association of America's standard bond form, or its equivalent, shall be used. When blanket fidelity insurance is purchased, carriers will be cautioned to apply all appropriate discounts.

(c) When a forgery bond or policy is required, a penal sum of $10,000 will ordinarily be considered sufficient. The Surety Association of America's standard depositors form of forgery bond or policy, or its equivalent, shall be used.

(d) Unless included as part of the bond form, the following provisions shall be included as riders or endorsements to fidelity and to forgery bonds or policies:

(i) a pro rata refund of the premium will be made in the event of cancellation by the insureds due to completion of the work under the contract;

(ii) the contracting officer will be given notice prior to cancelling or making any material change in the bond;

(iii) after a loss has been sustained, the full amount of the bond shall be restored without additional premium charge to protect against undiscovered or future losses;

(iv) the surety waives all rights to be subrogated, on payments of losses or otherwise, on any claim against the Government arising out of performance of a cost-reimbursement type contract; and

(v) in fidelity bonds only, the surety shall investigate all claims.

10-105.4 *Other Types of Bonds.* Other types of bonds may be required only when the contracting officer considers such bonds necessary in connection with the procurement of particular supplies or services and then only after approval is obtained, from the authority identified in 10-105.3(a).

10-106 Withholding Contract Payments.

(a) During performance of the contract the Government will not withhold contract payments due to the contractor or his assignee for the reason that subcontractors or suppliers have not been paid for work performed or supplies delivered.

(b) When contract work has been completed and the Government has been given written notice by the surety regarding the contractor's failure to meet its obligations to subcontractors or suppliers, the contracting officer shall withhold payment pending agreement between the contractor and the surety or a judicial determination establishing the rights of the parties, provided the surety, as a condition precedent to withholding payment by the Government shall agree to hold the Government harmless from any liability resulting from such withholding.

(c) Any withholding which may be required incident to the labor standards provisions of the contract shall be treated in accordance with Section XII and Section XVIII, Part 7.

10-107 Reserved.

10-108 Reserved.

10-109 Reserved.

10-110 Substitution of Surety Bonds. A new surety bond may be substituted for a bond previously approved covering part or all of the same obligation when approved, (i) for the Army, by The Judge Advocate General; (ii) for the Navy, by the Chief of Naval Material; (iii) for the Air Force, by the Air Force Logistics Command (MCJC); (iv) for the Defense Supply Agency, by the Head of a Procuring Activity; (v) for the National Security Agency, by the Director of Procurement; (vi) for the Defense Communications Agency, by the Chief, Contract Management Division (Code 260); (vii) for the Defense Nuclear Agency, by the Director; and (viii) for the Mapping Agency, by the Staff Director of Logistics. When so approved and authorized by Departments other than the Air Force, the principal and surety of the original bond will be notified that the original bond will not be considered as security for any default occurring after the date of acceptance of the new bond. When approved by the Air Force, authority to relieve an original surety of liability for default occurring subsequent to the date of approval of a substitute bond will be obtained from the Commander, Air Force Logistics Command, prior to giving such notification.

10-111 Additional Bond and Increase of Penalty.

10-111.1 *Additional Bond.* Requirements for additional bond resulting from changes or modifications to construction contracts are prescribed by 10-103.1(b) and 10-103.2(b). If a contract, other than a construction contract, for which a performance or payment bond has been executed is increased in price or modified to cover new or additional work, the contracting officer shall decide whether additional bond should be required in order to protect the interest of the Government adequately (the criteria of 10-104.1 and 10-104.2 may be used as a general guide for this purpose). The following form of Consent of Surety and Increase of Penalty is authorized for contract modifications to all types of contracts that provide for an increase in the penal sums of bonds previously given by the original surety or sureties. If there has been more than one surety on the bond or bonds, use the word or words in brackets and provide for additional signatures as necessary.

CONSENT OF SURETY AND INCREASE OF PENALTY

Modification No. ...., dated ....

Contract No. ....

The surety [cosureties] hereby consents [consent] to the foregoing contract modification and agrees [agree] that its [their] bond or bonds shall apply and extend to the contract as thereby modified or amended. The principal and the surety [cosureties] further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by .... dollars ($....................) and the penalty of the aforementioned payment bond or bonds is hereby increased by .... dollars ($....................). *Provided*, however, that the increase of the liability of each cosurety resulting from this consent shall not exceed the sums set forth below:

NAME OF SURETY	INCREASE IN LIABILITY LIMIT UNDER PERFORMANCE BOND	INCREASE IN LIABILITY LIMIT UNDER PAYMENT BOND

[SEAL] Date of Execution: ____________

____
(Signature of Individual Principal)*

____
(Type Name of Individual Principal)

____
(Business Address)

Date of Execution: ____________

____
(Corporate Principal)*

____

____
(Business Address)

By ______________________________
(Signature of Person Executing)

____
(Type Name and Title of Person Executing)

[Affix]
[Corporate]
[Seal]

continued on next page

CONSENT OF SURETY AND INCREASE OF PENALTY
— Continued

(Corporate Surety)

____

____

____

(Business Address)

By ______________________________

(Signature of Person Executing)

____

(Type Name and Title of Person Executing)

(Add similar signature blocks for cosureties.)

[Affix]
[Corporate]
[Seal]

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*This Consent of Surety and Increase of Penalty shall be executed by the principal or his authorized representative concurrent with the *execution* of the attached modification to which it pertains. If the individual who signs the consent is signing in a representative capacity (*e.g.*, attorney in fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, a Power of Attorney or Certificate of Corporate Principal, as appropriate, shall be submitted with the consent.

10–111.2 *Consent of Surety.* The following consent of surety shall be obtained from the surety or sureties on existing bonds in connection with any amendment, modification or supplemental agreement if:

(i) additional bond is obtained from other than the original surety;

(ii) no additional bond is required and (A) the modification is for new or additional work beyond the scope of the contract, or (B) the modification does not enlarge or diminish the scope of the contract, but changes the contract price (upward or downward) by more than $25,000 or 10 percent of the contract price; or

(iii) consent of surety is required in connection with a novation agreement (see 26–402(b)(x)).

If there is more than one surety on the bond or bonds, the cosureties may either execute a separate consent in the form here prescribed, or they may join in executing a single such consent using the words in brackets and adding additional executions of sureties similar to that set forth in the form.

CONSENT OF SURETY

Modification No. ...., dated ....

Contract No. ....

The surety [cosureties] hereby consents [consent] to the foregoing contract modification and the surety [sureties] agrees [agree] that its [their] bond or bonds shall apply and extend to the contract as thereby modified or amended.

.... Date of Execution

.... (*Corporate Surety*)
.... (*Affix Corporate Seal*)
.... (*Business Address*)
By....................................(*Signature of Person Executing*)
.... (*Type Name and Title of Person Executing*)
(Add similar signature blocks for cosureties.)

10-111.3 *Additional Bond—New Surety.* If additional bond coverage is required and will be furnished in whole or in part by a new surety, such surety must furnish its first bond coverage on a standard bond form (Standard Form 25 or 25-A, as appropriate).

10-112 Execution and Administration of Bonds and Consents of Surety.

(a) *Execution.* Several prescribed forms for bonds and related documents are listed in 16-805 and reproduced in Appendix F. Bonds and related documents executed on such forms shall comply with the instructions accompanying each form. The IFB or RFP may provide for execution and submission of more than one copy if desired. When required by Instruction Number 2 of the standard bond forms, the evidence of authority of a principal's representatives shall be a duly executed power of attorney reciting that the individual executing the bond or consent of surety is authorized to do so. A corporation, in lieu of such power of attorney, may submit a "Certificate as to Corporate Principal" in the format prescribed in (c) below.

(b) *Administration.* All bonds will be reviewed by the contracting officer to ascertain that the bond is in the penal sum required and, when appropriate, properly describes the contract. Additional review, approval, and distribution of bonds and consents of surety will be accomplished by each military department. When a contractor is performing his contract in such a manner as to lead to default, timely notification to the surety may result in action by the surety that will avoid a default. Therefore, on all such contracts, the surety shall be promptly notified of any failure by the contractor to perform (see 8-602.4(i) and 18-618.3).

(c) *Certificate As To Corporate Principal.* When a Certificate As To Corporate Principal is to be furnished, the following format shall be used.

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, ...(*Name printed*), certify that I am the ....(*Office held*) of the corporation named as principal in the (performance) (and) (payment) bond(s); that .... who signed the said bond(s) on behalf of the principal was then .... (*Capacity in which bond was executed*) of said corporation; that I know his signature and that his signature thereto is genuine; and that said bond(s) was (were) duly signed, sealed, and attested for and in behalf of said corporation by authority of its governing body.

.......................*Affix Corporate Seal*)

(d) *Name of Principal.* When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm and the phrase "a partnership composed of". If a principal is a corporation, the state of incorporation must appear.

(e) *Date of Bond.* A performance or payment bond other than an annual bond shall not antedate the contract to which it pertains.

(f) *Continuation Sheet*. The Standard Form 25–B (Continuation Sheet) is prescribed for use when there are more than seven sureties on a bid, performance, or payment bond. It shall also be used when there are cosureties on an annual bid or performance bond.

Part 2—Sureties

10-200 General. Every bond required or used in connection with a contract for supplies, services, or construction shall be supported by good and sufficient surety (corporate or individual) except as provided in 10-202.

10-201 Requirements of Sureties.

10-201.1 *Corporate Sureties and Cosureties.*

(a) *Corporate Sureties.* In connection with contracts for supplies, services, or construction to be delivered or performed in the United States, its possessions, or Puerto Rico:

(i) solicitations shall not require that only corporate sureties may be furnished or that a particular corporate surety be furnished, except as may be otherwise specifically provided (*e.g.*, position schedule bonds may be obtained only from corporate sureties); and

(ii) any corporate surety offered for a bond furnished the Government, or furnished pursuant to a Government contractual requirement, where the contracting officer has authority to approve the sufficiency of the surety, must appear on the Treasury Department List (TD Circular 570) and the amount of the bond must not be in excess of the underwriting limits stated in that list.

In connection with contracts to be performed in Panama, corporate Panamanian surety companies which are acceptable on bonds required by the Panama Canal Commission may be accepted in addition to the corporate sureties appearing on the Treasury List. The acceptability of Panamanian sureties shall be subject to the conditions and restrictions (including any requirement for security deposits) similar to those imposed by the Panama Canal Commission and to a determination by the contracting officer that the amount of the bond is commensurate with the underwriting capacity of the surety. For contracts to be performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if it is determined by the contracting officer that it is impracticable for the contractor to use Treasury-listed sureties.

(b) *Corporate Cosureties.* More than one corporate surety may be accepted as cosurety upon any recognizance, stipulation, bond, or undertaking in connection with contracts for supplies, services, or construction. In no case, however, shall the liability of any such cosurety exceed the maximum penal sum which it is qualified to underwrite on any one obligation. It is not necessary that each corporate surety obligate itself for the full amount of the bond. Each corporate surety may limit its liability in the bond to a specified sum. The sureties must bind themselves jointly and separately for the purpose of allowing a joint action or actions against any or all of them. Where the bond is to be executed by two or more corporate sureties, Standard Form 25 shall be used in the case of a performance bond and Standard Form 25-A in the case of a payment bond. On bonds covering supply or service contracts where the amount of the bond exceeds the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties having the required reinsurance underwriting capacity. Reinsurance may also protect bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 270a - 270d) covering contracts for the construction, alteration, or repair of any public building or public work of the United States, as well as other types of Federal bonds when the amount of the bond exceeds the underwriting limitation of the corporate surety.

Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company.

(c) *Termination of Authority To Qualify as Surety.* The Treasury Department issues supplements to the Treasury Department Circular 570, notifying all Federal agencies of the termination of the authority of a specified corporate surety company to qualify as a surety on Federal bonds. Contracting activities will be notified of these supplements in accordance with the procedures of their Departments. Upon receipt of notification of termination of a company's authority to qualify as surety on Federal bonds, each contracting officer concerned shall secure new bonds with acceptable sureties in lieu of any outstanding bonds with the named company.

10-201.2 *Individual Sureties.*

(a) *Acceptability.* Individual sureties are acceptable for all types of bonds other than position schedule bonds. An individual surety shall be a citizen of the United States, except that if the contract and bond are executed in any foreign country, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or any other territory or possession of the United States, such surety need only be a permanent resident of the place of execution of the contract and bond.

(b) *Number.* If individual sureties are used, there shall be at least two responsible individuals on each bond.

(c) *Extent of Liability.* The liability of each individual surety shall extend to the entire penal amount of the bond.

(d) *Justification.* The contracting officer, in evaluating bonds and consents of surety underwritten by individual sureties, must first ascertain that all documents, including the Affidavits of Individual Surety required by Instruction No. 4b on the reverse of Standard Form 24, "Bid Bond," and Instruction No. 3b on the reverse of Standard Form 25, "Performance Bond," and Standard Form 25-A, "Payment Bond," have been completely filled out and are properly executed. The contracting officer must next ascertain that each individual surety, underwriting a bond or consent of surety which increases the penal amount of a bond previously furnished, justifies his net worth "in a sum not less than the penalty of the bond" as required by Instruction No. 4 on the reverse of Standard Form 28, "Affidavit of Individual Surety." Since individual sureties are jointly and severally liable in the event of default by the principal, each individual surety must list on Standard Form 28 a net worth at least equal to the total penal amount of the bond or consent of surety. Example: If performance and payment bonds on a construction contract have penal amounts of $ 40,000 and $20,000, respectively, each individual surety must show a net worth of at least $60,000 to have the contracting officer accept his underwriting of such bonds. Normally net worth will be the amount indicated by the individual surety on line g, block 7, of Standard Form 28. However, the contracting officer is expected to consider all relevant information furnished by the individual surety on Standard Form 28 and make an independent determination of the individual surety's net worth based on the contracting officer's own best judgment. Example: Normally the "fair value" of real estate is a more realistic figure than the "assessed value" for taxation purposes. However, there may be situations where the reverse is true, for the purpose of determining net worth, in which case the contracting officer may determine net worth is a figure other than that entered on line g, block 7 of Standard Form 28. The contracting officer also should scrutinize closely the information entered in block 10 on Standard Form 28 as the amount of outstanding bond obligation of an individual surety may have a substantial bearing on the financial position of such individual surety. The contracting officer may determine that the total amount entered in block 10 should be deducted from the net worth figure entered on line g, block 7, to arrive at a more realistic net worth or he may determine to deduct nothing, or only a portion of the amount entered in block 10 if upon inquiry he discovers that the contracts on which the bonds were written are completed in part and suppliers and materialmen paid in part. Affidavits should be scrutinized closely by a contracting officer in any case where an individual surety is underwriting a bond for a principal for whom that surety has underwritten other outstanding bonds. If the contracting officer cannot make a determination of net worth on the basis of information furnished on Standard Form 28, he should require the individual surety to furnish additional information. As a general rule, the contracting officer should not require extrinsic evidence of an individual surety's net worth (other than Standard Form 28) unless Standard Form 28 is not filled out completely or properly, or unless the contracting officer has reason to believe that the individual surety's statements on Standard Form 28 do not reflect his true net worth.

(e) *Stockholders as Sureties*. On any bond of which a corporation is the principal obligor, a stockholder of that corporation is acceptable as cosurety on the bond; *provided*, that his net worth exclusive of his stock holdings or other interests, such as loans, in the corporation is equal to the amount for which he justified and *provided further*, that such fact is expressly stated in his affidavit of justification.

10-201.3 *Partnerships as Sureties*. A partnership or other unincorporated association, as such, shall not be accepted as surety. The individual members of the partnership or association may, if they meet the requirements of paragraph 10-201.2 above, qualify as sureties. Individual members of a partnership or association shall not be acceptable as sureties on bonds under which the partnership or association, or any copartner or member thereof, is the principal obligor.

10-201.4 *Substitution or Replacement of Surety*. In case of financial embarrassment, failure, or other disqualifying cause on the part of a surety, substitution of a new surety is required. In other cases, substitute sureties may be accepted, when consistent with the Government's interest (see 10-110).

10-202 Options in Lieu of Sureties. Any one or more of the types of security listed below may be deposited by the contractor in lieu of furnishing corporate or individual sureties on bonds. Any such security accepted by the contracting officer shall be promptly turned over to the disbursing officer concerned for other than Air Force contracts, and to the accounting and finance officer concerned for Air Force contracts, except that when United States bonds or notes are involved, they shall be deposited as provided in 10-202.1. Any such security or its equivalent shall be returned to the contractor when the obligation of the bond has by its terms ceased.

10-202.1 *United States Bonds or Notes*. In accordance with the provisions of the Act of 24 February 1919, as amended (6 U.S.C. 15) and Treasury Department Circular No. 154 (Revised, 31 October 1969), any person required to | furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing United States bonds or notes in an amount equal at their par value to the penal sum of the bond, together with an agreement authorizing the collection or sale of such United States bonds or notes in the event of default on the penal bond. The contracting officer may turn these securities over to the disbursing officer or accounting and finance officer as provided in 10-202, or deposit them with a Federal Reserve Bank, or Branch, having the requisite facilities, or other depository duly designated for that purpose by the Secretary of the Treasury.

10-202.2 *Certified or Cashier's Checks, Bank Drafts, Money Orders, or Currency.* Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of furnishing a certified or cashier's check, a bank draft, a Post Office money order, or currency, in an amount equal to the penal sum of the bond, which the contracting officer will immediately deposit with the appropriate activity named in 10-202. Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the office designated for contract administration.

Part 3—Insurance—General

10-300 Scope of Part. This Part sets forth the general principles and policy applicable to insurance under contracts of the Department for supplies or services.

10-301 Definitions. As used in this Section X the following terms shall have the meanings set forth below:

10-301.1 *Insurance* means the protection against the risk of financial loss by the purchase of coverage from sources independent of and external to the contractor's business or by a program of self-insurance.

10-301.2 *Purchased insurance* means insurance purchased from insurers independent of and external to the contractor.

10-301.3 *Self-insurance* means the assumption or retention of the risk of loss, whether voluntarily or involuntarily, by the contractor. Self-insurance includes the deductible portion of purchased insurance. Insurance provided by captive insurers; i.e., insurers owned by or under the control of the contractor, is self-insurance except that if the captive insurer sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive forces, then the insurance will be considered purchased insurance. This definition applies only to contracts subject to the provisions of Cost Accounting Standard (CAS) 416 or to contracts not subject to the provisions of CAS 416 when the contractor elects to establish a program of self-insurance (see 15-205.16(a)). Self-insurance is not recognized on contracts not subject to the provisions of CAS 416 unless the contractor makes such an election.

10-302 General. Contractors shall be required to carry insurance when:

(a) Insurance, either by purchase or self-coverage, is required for the various perils to which a contractor, subject to CAS 416 (see 15-205.16(a)) is exposed, and except to the extent (i) the Government pursuant to law, agrees in a contract provision to indemnify the contractor under specified circumstances and (ii) a contractor is relieved of liability for loss or damage to Government property pursuant to a contract provision. However, the right to disapprove any insurance coverage is reserved should such insurance not be in the best interest of the Government. Additionally, approval of any contractor insurance program under this Section does not constitute a determination as to the allowability of the program's cost (see-15-205.16).

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law as well as this Regulation to provide insurance for certain types of perils such as workmen's compensation. Coverage is also mandatory when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of coverage required by this Regulation may be reduced when a contract is to be performed outside the United States, its possessions, and Puerto Rico. When more than one Department is involved, the Department responsible for review and approval of a contractor's insurance program shall coordinate with other interested Departments prior to taking action on significant insurance matters.

10-303 Self-Insurance.

(a) Self-insurance programs must be submitted to the administrative contracting officer for approval when it is anticipated that 50 percent or more of the self-insurance costs to be incurred at a segment will be allocable to negotiated Government contracts and the self-insurance costs at the segment for the contractor's fiscal year are expected to be $200,000 or more. The submission shall be by segment or segments of the contractor's business to which the program applies and shall include, at a minimum, the following data:

(i) description of self-insurance program including any Board of Director resolution authorizing and adopting coverages as to types of risks included and limits, with safety, loss control and legal service responsibilities clearly assigned;

(ii) if available, the Corporate Insurance Manual and organizational chart detailing insurance fiscal responsibilities;

(iii) terms regarding coverage of insurance for any Government property;

(iv) latest financial statements;

(v) any self-insurance feasibility studies and insurance market surveys reporting comparative alternatives;

(vi) loss history, premiums history and industry ratios;

(vii) formula for establishing reserves including variations on a percentage basis between losses paid and losses reserved;

(viii) claims administration policy, practices and procedures;
(ix) how the projected average loss will be calculated;
(x) disclosure of all captive insurance company and re-insurance agreements including methods of costing.

Once approved, any major changes to the program must also be submitted for contracting officer approval. The approval of any program may be withdrawn upon a finding by the contracting officer that either (i) the program or any part thereof no longer complies with the requirements of this Section X and 15-205.16 and (ii) conditions or situations in existence at the time of approval which were a part of the basis for original approval of the program have changed to such an extent that a change in the program is determined to be necessary before it can be approved again.

(b) Programs of self-insurance covering any kind of risk may be approved when examinations of such programs indicate that their application is in the best interest of the Government. However, self-insurance for catastrophic type risks will not be recognized. Should performance of Government contracts create the risk of catastrophic losses for the contractor, the Government may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both. To qualify for a program of self-insurance, a contractor must demonstrate that he can sustain the potential losses being self-insured. Some of the factors to be considered in this determination are:

(i) soundness of financial condition, including available lines of credit;
(ii) geographic dispersion of assets so that the potential of a single loss depleting all the assets is unlikely;
(iii) history of losses as to the frequency of occurrence and the financial impact of each occurrence;
(iv) type and magnitude of risk being self-insured, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks;
(v) compliance with Federal and state laws and regulations.

(c) A program of self-insurance for workmen's compensation in any jurisdiction where workmen's compensation does not completely cover employers' liability to employees may be approved only if (i) the contractor also maintains an approved program of self-insurance for any employers' liability which is not so covered or (ii) the contractor shows that the combined cost to the Government of self-insurance for workmen's compensation and purchased insurance for employers' liability will not exceed the costs of covering both kinds of risks by commercial insurance.

10-304 Notice of Cancellation or Change. When insurance is required by contract provision or in writing by the contracting officer or other approving authority, the policies evidencing purchase of such insurance shall contain an endorsement to the effect that cancellation or material change in the policies, adversely affecting the interest of the Government in such insurance, shall not be effective unless the written notice as required by the contracting officer or other approving authority is given. When the coverage is provided by self-insurance, prior approval of the administrative contracting officer is required for any change or decrease in coverage (see 10-303(a)).

10-305 Insurance Against Loss of or Damage to Government Property. Generally, a contractor is relieved of liability for loss of or damage to Government property and insurance coverage is not required. This general rule is limited by certain of the contract clauses in Sections VII and XIII. When insurance is required or approved, the insurance policies for purchased coverage or the Statement of Program Coverage (see 10-303(a)(1) for self-insurance) shall disclose the Government's interest in the property.

10-306 Procedures to be Followed in the Event of Loss of or Damage to Government Property. Upon the happening of loss of or damage to any Government property, concerning which the contractor is relieved of responsibility by contract provision, the procedure to be followed shall be as prescribed in subparagraphs (g)(4) of the clause in 7-104.24(c) and (g)(3) of the clauses in 7-203.21, 7-303.7, 7-402.25(a) and 7-901.5.

BONDS, INSURANCE, AND INDEMNIFICATION

Part 4—Insurance Under Fixed-Price Contracts

10–400 Scope of Part. This Part sets forth the policy of the Departments with respect to insurance under fixed-price contracts for supplies or services.

10–401 Policy. Generally the Departments are concerned with the insurance program of a fixed price contractor only when special circumstances exist. Examples are:

(i) the contractor is engaged principally in Government works;
(ii) the contractor has a separate operation engaged principally in Government work;
(iii) Government property of substantial value is involved;
(iv) the work is performed within a Government installation;
(v) the Government desires to assume risks for which the contractor ordinarily obtains commercial insurance;
(vi) a substantial amount of work is being performed under a fixed-price incentive contract; and
(vii) adequate coverage is not available in the commercial market at a reasonable cost.

10–402 Government Property. The contractors' responsibilities for loss of or damage to Government property under fixed price contracts are set forth in the clauses in 7–104.24.

10–403 Workmen's Compensation and War Hazard Insurance Overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901) to various classes of employees engaged in work outside the United States, including any employee engaged (i) in the performance of a public work contract or (ii) in the performance of any contract approved or financed pursuant to the Foreign Assistance Act of 1961 other than (A) contracts approved or financed by the Development Loan Fund, or (B) contracts exclusively for the furnishing of materials or supplies. As used in this paragraph, a "*public work*" contract includes any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. When the Defense Base Act applies, the benefits of the Longshoremen's and Harbor Workers' Compensation Act are extended through operation of the War Hazards Compensation Act, as amended (42 U.S.C. 1701 et seq.), to afford protection to employees against the hazards of war risks (injury, death, capture, or detention). Under this plan, once a contract employer has provided the Workmen's Compensation coverage required by the Defense Base Act (by insurance policy or self-insurance program), his employees automatically receive War Hazard Risk protection. An employer need not insure against War Hazard Risk, however, since such war risk benefits are provided at no cost to the employer by the Bureau of Employee's Compensation, Department of Labor. The clause in 7–104.2(a) shall be included in all public work contracts to be performed outside the United States.

(b) Upon the recommendation of the Secretary concerned, the Secretary of Labor may waive the applicability of the Defense Base Act with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees.

(c) Requests for waivers shall be submitted through channels (i) for the Army, to the Labor Advisor, Office of the Assistant Secretary of the Army (I&L); (ii) for the Navy, to the Chief of Naval Material; (iii) for the Air Force, to the Directorate of Procurement Policy, Headquarters USAF; (iv) for the Defense Supply Agency, to the Deputy Director, Contract Administration Services, Attn: DCAS-AF; (v) for the Defense Communications Agency, to the Chief, Contract Management Division; (vi) for the Defense Nuclear Agency, to the Chief, Office of Procurement; and (vii) for the Defense Mapping Agency, to the Staff Director of Logistics. The request for waiver shall include the following:

(i) name of contractor;
(ii) business mailing address of contractor;
(iii) contract number;
(iv) date of award;
(v) geographic location where contract will be performed;
(vi) name of insurance company providing the Defense Base Act coverage;
(vii) nationality of employees to whom waiver is to apply; and
(viii) reason for waiver.

(d) (1) If the Defense Base Act has been waived with respect to some or all of the contractor's employees in accordance with procedures set forth in (b) and (c) above, the benefits of the War Hazards Compensation Act will also have been waived as to such employees. In case of such waivers, the contractor shall provide protection against the risk of work injury or death (workmen's compensation type coverage) for the benefit of such waived employees. Insurance for this purpose as in any other case should be obtained at competitive rates in line with the policies of Section XV, particularly if there has been a waiver and the insurance has been or is to be obtained to comply with workmen's compensation or equivalent statutes of a foreign country.

(2) The contractor shall also assume liability to such waived employees and their beneficiaries for war hazard injury, death, capture or detention. At the option of the Chief of the Contracting Office, either the costs of this liability or the reasonable cost of insurance against this liability shall be allowed as a cost under the contract. If it is decided that the contractor shall not purchase insurance against this liability, the clause in 7-104.2(c) shall be included in the contract.

(e) If a contract would otherwise be subject to (a) above, but (d) applies to some or all of the contractor's employees by reason of waiver by the Secretary of Labor, the provisions of 10-501.1(b) and (c) apply, and the clause in 7-104.2(b) shall be included in the contract.

10-404 Aircraft—Ground and Flight Risk.

(a) Negotiated fixed-price type contracts for the production, modification, maintenance, or overhaul of aircraft shall, except as provided in (b) below, include the clause in 7-104.10.

(b) (1) In paragraph (b) of the clause in 7–104.10, certain of the defined terms may be modified by insertion of appropriate additional definitions in the contract in accordance with the following. The purpose of the clause is to have the Government assume risks which generally entail unusually high insurance premiums and which are not covered by the contractor's "contents," "work-in-process," or other similar insurance. It is recognized that all of the definitions prescribed in the clause may not cover all situations which should be covered if the above purpose is to be accomplished. Therefore, changes may be effected in the contract as set forth below.

(i) Since the standard definition of "*aircraft*" contemplates conventional types of winged aircraft, a modified definition is necessary if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships or other nonconventional types of aircraft. The modified definition should take into consideration that the aircraft has reached a point of manufacture comparable to that required in the standard definition;

(ii) The definition of "*in the open*" may be modified to include "hush houses," test hangers, and comparable structures, and other designated areas;

(iii) "*Contractor's premises*" shall be expressly defined and shall be limited to those locations where aircraft, as defined in the clause, may be located during and for the performance of the contract. "*Contractor's premises*" may include, but are not limited to, premises owned or leased by the contractor or premises as to which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

(2) The Government need not assume the risk of damage to, or loss or destruction of, aircraft, as provided by the clause, if the best estimate of premium costs which would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than $500. The Government shall not assume such risks if the aircraft is being acquired in connection with a Foreign Military Sale and the foreign government involved has not agreed to assume such risks. If it is determined not to assume such risks, the clause shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover such risks shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the Flight Risks clause in 7–204.21, suitably adapted for use in a fixed-price type contract, shall be used.

(3) Subparagraph (d) (iii) of the clause in 7–104.10 may be varied to provide for Government assumption of risk of transportation by conveyance on streets or highways where the contracting officer determines that such transportation is limited to the vicinity of the contractor's premises and is merely an incident to work being performed under the contract.

10–405 Work on a Government Installation.

(a) Insert the clause in 7–603.10 in all construction and architect-engineer contracts requiring work on a Government installation, and the clause in

7-104.65 in all other contracts requiring work on a Government installation. Neither clause is required, however, for contracts (i) of $10,000 or less, (ii) when only a small amount of work is required on a Government installation (*e.g.*, a few brief visits per month), and (iii) when all work on a Government installation is to be performed outside the United States, its possessions, and Puerto Rico. The coverage specified in 10-501 is the minimum insurance required and shall be included in the clause in 7-603.10 or in the contract schedule. Additional coverage and higher limits may be required by the contracting officer.

(b) The clause in 7-104.65 or the clause in 7-603.10 may also be included in contracts described in (a) (i), (ii), and (iii) above when the contracting officer considers this to be in the interest of the Government. In such contracts, if appropriate, any of the kinds of insurance listed in 10-501 may be omitted or the limits may be lowered.

10-406 Capture and Detention of Contractor Employees. The clause in 7-104.94 is authorized for use when the employees of a contractor are subject to capture and detention under circumstances which may be outside the scope of the War Hazards Compensation Act (42 U.S.C. 1701 et seq.).

Part 5—Insurance Under Cost-Reimbursement Type Contracts

10-500 Scope of Part. This Part sets forth the policy of the Departments with respect to insurance under cost-reimbursement type contracts for supplies or services.

10-501 Policy. The types of insurance listed below, with the minimum amounts of liability indicated, ordinarily shall be required in cost-reimbursement contracts and subcontracts thereunder when the provisions of the prime contract are extended to the subcontract. (Insurance written on a single limit basis must be equal to or greater than the combined required minimums indicated.) An approved program of self-insurance, as provided in 10-303, may be substituted for any of the types of insurance ordinarily required.

10-501.1 *Workmen's Compensation and Employers' Liability Insurance.*

(a) Compliance with applicable workmen's compensation and occupational disease statutes shall be required. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational disease shall be required under the employers' liability section of the insurance policy; however, such additional insurance shall not be required when contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. Employers' liability coverage in the minimum amount of $100,000 shall be required except in states with exclusive or monopolistic funds which do not permit the writing of workmen's compensation by private insurance carriers (Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming). The clause in 7-104.2(a) shall be included in all public work contracts as described therein to be performed outside the United States.

(b) When the clause in 7-104.2(b) is required for contractor programs of self-insurance, and the Chief of the Contracting Office determines that the contractor shall not purchase insurance against the liability described in 10-403(d)(2), the clause in 7-104.2(c) shall be inserted in the contract.

(c) Each contract containing the clause in 7-104.2(c) shall contain:

(i) the estimated cost for war hazard losses;
(ii) the clause at 7-203.4(a) appropriately limited to cover allowable war hazard cost;
(iii) the Examination of Records clause (7-104.15); and
(iv) a provision similar to the following:

> The portion of this contract providing for the Contractor to afford protection to his employees and by subcontractors to their employees against war hazard risks

(see the clauses entitled Reimbursement for War Hazard Losses and Workmen's Compensation and War Hazard Insurance Overseas) is on a cost-reimbursement, no-fee basis, notwithstanding the basis of payment for the remainder of the contract.

(d) The estimated cost for war hazard losses will be based upon estimates arrived at in the light of experience, taking into account the number of the contractor's employees subject to protection for war hazard risks, the level of benefits applicable to such employees, location, and nature of the risks to which the contractor's employees are exposed. The amount allotted to the contract will initially be kept small as reasonably feasible. As reports are received indicating the need to increase the allotment to a particular contract, these will be evaluated and the allotment increased as necessary. When negotiating for the inclusion in a contract of provisions applicable to war hazard risks, the contracting officer may include provisions concerning the types of foreign nationals employed by the contractor, the level of benefits applicable to them, and other pertinent provisions relating to the manner in which the program will function to the benefit of all concerned. Advance agreements pursuant to 15-107 may also be advantageous with respect to the levels of proof considered acceptable to justify the contractor commencing payments and being reimbursed therefor prior to the time he is able to work out, in a proper case, lump sum settlement of his obligation.

10-501.2 *General Liability Insurance*. Bodily injury liability insurance, in the minimum limits of $300,000 per occurrence shall be required on the comprehensive form of policy; however, property damage liability insurance ordinarily shall not be required.

10-501.3 *Automobile Liability Insurance*. This insurance shall be required on the comprehensive form of policy and shall provide bodily injury liability and property damage liability covering the operation of all automobiles used in connection with the performance of the contract. At least the minimum limits of $100,000 per person and $300,000 per occurrence for bodily injury and $10,000 per occurrence for property damage shall be required.

10-501.4 *Aircraft Public and Passenger Liability Insurance*. When aircraft are used in connection with the performance of the contract, such insurance ordinarily will be considered required coverage. The minimum limits of $100,000 per person and $300,000 per occurrence for bodily injury, other than passenger liability, and a limit of $100,000 per occurrence for property damage shall be required. Passenger liability bodily injury limits of $100,000 per passenger with an aggregate equal to the total number of seats or number of passengers whichever is greater, shall be required.

10-501.5 *Vessel Collision Liability and Protection and Indemnity Liability Insurance.* Where vessels are used in connection with the performance of the contract, such insurance shall be required whenever deemed necessary by the Department concerned.

10-502 Government Property. The contractor's responsibilities for loss of or damage to Government property under cost-reimbursement-type contracts are set forth in the clause in 7-203.21.

10-503 Aircraft-Flight Risk.

(a) Cost-reimbursement-type contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor by the Government, shall, except as provided in (b) below, include the clause in 7-204.21.

(b) In the clause, the definition of "*aircraft*" may be appropriately modified if the contract covers helicopters, vertical take-off aircraft, lighter-than-air airships, or other nonconventional types of aircraft.

10-504 Group Insurance Plans Under Cost-Reimbursement Type Contracts.

(a) Group insurance plans under cost-reimbursement contracts shall be submitted for approval to the Heads of Procuring Activities for the Department of the Army; The Chief of Naval Material for the Department of the navy: Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Director, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency. For the Defense Logistics Agency, such plans shall be submitted for approval to the Directors, Directorate of Contract Administration, DCASR New York (DCRN-C), DCASR Chicago (DCRI-C), or DCASR Los Angeles (DCRL-C), as appropriate. Changes in the benefits provided under an approved plan that can reasonably be expected to increase significantly the costs being charged to the Government shall be submitted as provided above for approval. Provision shall also be made for the Government to participate in all premium refunds or credits paid or otherwise allowed to the contractor, as required by 15-201.5. In determining the extent of the Government's participation in such premium refunds or credits, consideration shall be given to any special reserves and other refunds that may subsequently be paid to the contractor.

(b) The Defense Department Group Term Insurance Plan is available for use by cost-reimbursement type contractors. A contractor is eligible only if the number of covered employees is 500 or more, and (i) the contractor is wholly engaged in operations under eligible contracts, or (ii) 90 percent or more of the payroll of contractor's operations to be insured under the Plan arises under eligible contracts. Insurance policies under this plan shall be submitted for approval to the Heads of Procuring Activities, for the Department of the Army; the Chief of Naval Material, for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA-AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency.

10-505 Capture and Detention of Contractor Employees. See 10-406.

BONDS, INSURANCE, AND INDEMNIFICATION

Part 6—Special Casualty Insurance Rating Plan

10–600 Scope of Part. This Part sets forth principles and requirements for use of the National Defense Projects Rating Plan which is available for application on both domestic and foreign contracts, which meet the eligibility requirements set forth herein. This plan provides a special rating formula for the purchase of the casualty insurance coverages listed in 10–501.1 through 10–501.3, and is mandatory as to contracts which meet the use and eligibility standards in 10–603. Construction subcontractors whose contracts provide that the prime contractor shall furnish insurance, and whose operations are at the project site, shall be included automatically in the prime contractor's rating plan policies for similar coverage. Construction subcontractors whose operations are away from the project site shall not be included in the prime contractor's rating plan.

10–601 Purpose of Plan. This plan is designed to utilize the services and organizations of the insurance industry for safety engineering and the handling of claims arising under eligible contracts at a minimum cost to the Government.

10–602 Description of Plan. This plan is effected by endorsements attached to standard insurance policy forms for workmen's compensation, employer's liability, general liability, and automobile liability. The rating plan provides for a fixed deposit premium, for a reduced rate of current premium payments, for yearly adjustments of the premium depending upon loss experience during the period, and for final adjustment of the premium based upon the experience of the entire period covered by the policies. The final adjustment may be deferred for a maximum of 68 months after expiration of the policies. The total adjusted premium is the sum of the following:

(i) a fixed charge which is a percentage of the standard premium and is to compensate the insurance company for general expenses other than those referred to hereafter;

(ii) modified losses, which are the losses paid or incurred, multiplied by a conversion factor of 1.12 to compensate the insurance company for claim department expense;

(iii) allocated claims expenses, which are expenses for claims services not of the type ordinarily rendered by the insurer's claim department, such as actual expenditures for attorney's fees and other trial or hearing expenses in connection with litigated cases;

(iv) special assessments imposed by the applicable jurisdiction for purposes such as second injury funds, rehabilitation funds, maintenance of workmen's compensation commissions, etc.; and

(v) actual premium taxes.

Each of the above adjustments are subject to review by authorized representatives of the Department concerned, and the total adjusted premium derived therefrom cannot exceed a maximum premium which is a percentage of the standard premium developed by use of manual rates issued or approved by the appropriate rating organization. In general, the plan is a variation of commercially available insurance rating plans, but has been specifically developed to meet the requirements of the Departments.

10–603 Use and Eligibility for Plan. The rating plan described in this Part 6 shall be applied to all eligible defense projects where such application is determined by the Heads of Procuring Activities for the Department of the Army; the Chief of Naval Material, Attn: Contract Insurance Branch, for the Department of the Navy; Air Force Systems Command, administrative contracting officers for the Department of the Air Force; the Deputy Director, Contract Administration Services, Attn: DLA-AF, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; the Director, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; to be in the best interest of the Government. The rating plan may be applied to cost-reimbursement type contracts and also, in appropriate cases, to fixed-price contracts with price redetermination provisions. A defense project is eligible for application of a plan when (i) eligible Government contracts represent, at inception of the plan, at least 90 percent of the payroll for total operations at the specific locations of the project; and (ii) the annual premium for insurance is estimated to be at least $10,000. A defense project may include contracts awarded by more than one Department to the same contractor.

10–604 Agreement for Settlement of Premiums Under National Defense Projects Rating Plan. The following agreement shall be used for accomplishing the assignment to the Government of the interest in return premiums, premium refund, etc., on insurance policies issued under the National Defense Projects Rating Plan, upon termination or completion of the contract, when the Government has assumed the payment of the contractor's obligation for further premium payment under such policies:

SPECIAL CASUALTY INSURANCE RATING PLAN
ASSIGNMENT-ASSUMPTION OF PREMIUM OBLIGATIONS

It is agreed that 100%* of the return premiums and premium refunds (and dividends) due or to become due the prime contractor under the policies to which the National Defense Projects Rating Plan Endorsement made a part of policy .... applies are hereby assigned to and shall be paid to the United States of America, and the prime contractor directs the Company to make such payments to the office designated for contract administration acting for and on account of the United States of America.

The United States of America hereby assumes and agrees to fulfill all present and future obligations of the prime contractor with respect to the payment of 100%* of the premiums under said policies.

This agreement, upon acceptance by the prime contractor, the United States of America and the Company shall be effective from ....

Accepted .... (*Date*)
.... (Name of Insurance Company)
By .... (*Title of Official Signing*)

Accepted .... (*Date*)
United States of America
By .... (*Authorized Representative*)

Accepted .... (*Date*)
.... (Prime Contractor)
By .... (*Authorized Representative*)

*In the event the Government has less than a 100% interest in premium refunds or dividends, the assignment shall be appropriately modified to reflect the percentage of interest and of the extent of the Government's assumption of additional premium obligation.

10–605 Limitation of Coverage on Automobile Liability. Since the Federal Tort Claims Act provides protection for employees of the Government while driving government-owned vehicles within the scope of their employment, the National Defense Projects Rating Plan shall exclude coverage for such employees. The following endorsement shall be attached to automobile liability coverage provided under the plan.

> It is agreed that such insurance as is afforded by the policy with respect to the ownership, maintenance or use of automobiles, including loading and unloading thereof, does not apply to the following as insureds: The United States of America, any of its agencies, or any of its officers or employees.

BONDS, INSURANCE, AND INDEMNIFICATION

Part 7—Indemnification of Contractors and Subcontractors

10-700 Scope of Part. This Part does not apply to or restrict the indemnification of contractors against risks not covered in this Part 7.

10-701 Indemnification Under Research and Development Contracts Against Unusually Hazardous Risks.

(a) *Use of Clause.* Pursuant to the authority of 10 U.S.C. 2354 and when authorized by the Secretary concerned (or his designee under 10 U.S.C. 2356), a contract for research or development, or both, may provide for indemnification of the contractor and subcontractors against (i) claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and (ii) loss of or damage to the contractor's property, to the extent that such liability, loss or damage (A) results from a risk that the contract defines as "unusually hazardous", (B) arises out of the direct performance of the contract and (C) is not compensated by insurance or otherwise. When authorization has been obtained, the appropriate clause in 7-303.61 or 7-403.56 shall be used.

(b) Each contract containing a clause authorized by (a) above shall clearly define the specific unusually hazardous risks to which the clause applies. This definition shall be submitted for approval with the request for authorization to grant indemnification. The definition may be included as an additional paragraph of the clause or inserted elsewhere in the contract. The fact that one or more risks under a contract may appropriately be defined as unusually hazardous does not justify so defining other risks of contract performance which are not in themselves unusually hazardous; neither does it preclude indemnification of such other risks under other appropriate authority.

10-702 Indemnification Under Public Law 85-804.

(a) *Use of clauses.* Pursuant to Public Law 85-804 (see 17-501) and Executive Order 10789, as amended (see 17-502), and subject to compliance with the provisions of Section XVII, Part 3, the appropriate clause in 7-303.62 or 7-403.57 may be used in contracts other than those for which indemnification is available under 10-701, to provide for the indemnification of contractors and subcontractors against unusually hazardous or nuclear risks.

(b) Each contract containing a clause authorized by (a) above shall clearly define the specific risks to which the clause applies. This definition shall be submitted for approval with the request for authorization to grant indemnification. The definition may be included as an additional paragraph of the clause or inserted elsewhere in the contract. The fact that one or more risks under a contract may appropriately be defined either as unusually hazardous or as nuclear risks does not justify so defining other risks; neither does it preclude indemnification of such other risks under appropriate authority.

10-703 Indemnification Under Contracts Involving Both Research and Development and Work That Cannot Be So Classified. Certain contracts require a substantial amount of research and development work as well as a substantial amount of work that cannot be so classified. When indemnification is to be provided for such contracts, an appropriate clause, utilizing the authority of both 10 U.S.C. 2354 and Public Law 85-804 may be used. In such cases, the use of Public Law 85-804 to provide indemnification is limited to work which cannot be indemnified pursuant to 10 U.S.C. 2354 and is subject to compliance with the provisions of Section XVII, Part 3.

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SECTION XI—TAXES

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SECTION XI

TAXES

11-000 Resolution of Tax Problems.

(a) The problems presented in connection with the administration of the tax aspects of a contract or transaction are widely varied. The right to immunity, exemption, refund, credit, or drawback depends upon the nature of the tax, the particular tax law, the party sought to be taxed, the items being procured, and the provisions of the contract. These problems are essentially legal; therefore, when questions arise, contracting officers shall request the assistance of counsel.

(b) It is desirable that uniform and consistent tax policies and procedures be maintained throughout the Department of Defense. Accordingly, negotiations will not be undertaken or directed by procuring activities with any taxing authority for the purpose of determining the validity or applicability of, or for obtaining exemption from or refund of, any tax, except with the approval of: Chief, Procurement Law Division, Office of the Judge Advocate General, for the Army; the General Counsel, for the Navy; the General Counsel, for the Air Force; The Counsel, for the Defense Supply Agency; The General Counsel, for the National Security Agency; the Counsel for the Defense Communications Agency; the General Counsel, for the Defense Nuclear Agency; and the Counsel, for the Defense Mapping Agency. In addition, where the constitutional immunity of the United States from State or local taxation may reasonably be in issue, contracting officer should discourage contractors having cost-reimbursement type contracts or fixed-price type contracts containing a tax escalation clause from undertaking independent negotiations with taxing authorities pending approval as indicated above.

(c) Occasionally, a contractor having a cost-reimbursement type contract or a fixed-price type contract containing a tax escalation clause will be directed, after coordination with the other Departments through the Armed Services Tax Group, to litigate the applicability of a particular tax. In such cases, guidance will be issued in Defense Procurement Circulars informing purchasing activities of the litigation, the need for special contract clauses covering the tax in question, and instructions to be given contractors regarding nonpayment, payment, protest or other specific treatment of the tax (see 11-401.4). In addition, similar guidance may be furnished concerning an anticipated repeal or reduction in the rate of a tax. It is particularly important that this guidance be considered by those negotiating incentive type contracts in order that the tax in question may be treated separately in the establishment of target price.

(d) Questions relating to the implementation of the DoD Foreign Tax Relief Program shall be referred to the cognizant office of the Military Department or Defense Agency listed in (b) above. The definitions, policies, and responsibilities set forth in DoD Directive 5100.64 (see Appendix Q) are applicable to foreign taxes and duties, and that Directive and the applicable implementing regulation or instruction should be consulted by procuring activities prior to the initiation of foreign procurement. Timely information concerning the proposed resolution of particular foreign tax problems not unique to a single Military Department or Defense Agency, or any other matter affecting the administration of the DoD Foreign Tax Relief Program shall be provided by overseas procuring activities to the appropriate Designated Commanding Officer (see Appendix Q) and Unified Command (or, as regards Canada or Greenland, to the U.S. Aerospace Defense Command).

TAXES

Part 1—Federal Excise Taxes

11-100 General. This Part deals with Federal taxes involved in the procurement of certain supplies and services. It is for the general information of Government personnel and does not purport to present the full scope of the applicable provisions of law and implementing regulations as they may be amended from time to time.

11-101 Retailers Excise Taxes, Special Fuels.

11-101.1 *Diesel Fuel.* A tax at the indicated rates is imposed upon any liquid, other than that taxable as gasoline under section 4081 of the Internal Revenue Code (see 11-102.3), which is (1) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle, or (2) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid pursuant to (1) above, as follows:

(i) at 4 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(A) which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(B) which, if owned by the United States, is used on the highway; or

(ii) at 2 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(A) which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(B) which, if owned by the United States, is not used on the highway; and

(iii) at an additional 2 cents per gallon, if fuel on which a tax of 2 cents was paid pursuant to (ii) above, is used as fuel in a diesel-powered highway vehicle—

(A) which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(B) which, if owned by the United States, is used on the highway.

No tax is imposed on diesel fuel sold for use or used as fuel in a nonhighway vehicle, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms.

11-101.2 *Special Motor Fuels.* A tax at the rates indicated below is imposed upon benzol, benzene, naphtha, liquefied petroleum gas, casinghead and natural gasoline, or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel under 11-101.1, or as gasoline under section 4081 of the Internal Revenue Code (see 11-102.3), which is (1) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion thereof, or (2) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane, unless there was a taxable sale of such liquid pursuant to (1) above, as follows:

(i) at 4 cents per gallon, if such liquid is sold for use or is used as a fuel for a highway vehicle—

(A) which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(B) which, if owned by the United States, is used on the highway, or

(ii) at 2 cents per gallon, if such liquid is sold for use or is used as a fuel for the propulsion of a motorboat or airplane, or a motor vehicle—

(A) which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(B) which, if owned by the United States, is not used on the highway; and

(iii) at an additional 2 cents per gallon, if a liquid on which a tax of 2 cents was paid pursuant to (ii) above, is used as fuel in a highway vehicle—

(A) which, at the time of such use, is registered, or required to be registered, for highway use under the laws of any State or foreign country; or

(B) which, if owned by the United States is used on the highway.

11-101.3 *Procedures.*

(a) *General.* The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle, or of special motor fuel to an owner, lessee, or other operator of a motor vehicle, motor boat, or airplane is considered as a taxable sale by the Internal Revenue Service only (i) if the liquid is delivered by the seller into the fuel supply tank of the vehicle, motor boat, or airplane, or (ii) where not so delivered, the purchaser indicates in writing to the seller prior to or at the time of the sale that the entire quantity of the liquid covered by the sale is for use by him for a taxable purpose as a fuel in such a vehicle, motor boat or airplane. If such a written statement is not furnished by the purchaser, he is liable for the tax at the applicable rate on that quantity of the liquid which is used by him as fuel in such a vehicle, motor boat or airplane, or which is sold by him in a taxable transaction.

(b) *Diesel Fuel.* Within the Departments, diesel fuel is the only product which could be taxable under 11-101.1. Diesel fuel shall be procured by the Departments at a price exclusive of the tax on diesel fuel unless the contract under which such fuel is to be furnished requires the contractor to deliver it into the fuel supply tank of a diesel-powered highway vehicle. The activity of any Department using diesel fuel in a diesel-powered highway vehicle, where the fuel had not been delivered by the contractor into the fuel supply tank of the vehicle and had therefore been procured tax free, shall be responsible for making payment of the tax, at the applicable rate, directly to the Internal Revenue Service. Such payment shall be made quarterly on TD Form 720 "Quarterly Federal Excise Tax Return." A Certificate of Export is not required to support a tax-free sale of diesel fuel exported to a foreign country or shipped to a possession of the United States or to Puerto Rico.

(c) *Special Motor Fuel (Jet Fuel).* The only product procured by the Departments to which the tax under 11-101.2 could apply is jet fuel. Benzol, benzene, naphtha, liquefied petroleum gas, casinghead and natural gasoline, or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel or as gasoline) is not used by the Departments as a fuel for the propulsion of motor vehicles, motor boats or airplanes and, therefore, the procurement of these products by the Departments would not be subject to the tax on special motor fuel. Moreover, none of these products is subject to the manufacturers excise tax on gasoline. The procurement of jet fuel by the Departments, except on AF Form 15, shall be at a price exclusive of the tax on special motor fuels. The furnishing of a tax exemption certificate (vessel-of-war) is not required unless the contract under which such fuel is to be furnished requires the contractor to deliver it into the fuel supply tank of aircraft or unless such fuel meets the specification requirements of motor gasoline set forth in paragraph (A) of Section 314.30 of Regulation 44 of the Internal Revenue Service. The contract price for jet fuel procured by any Department shall not include an amount for manufacturers excise tax on gasoline used in the production of such fuel. (If the manufacturers excise tax on gasoline has been paid on any material used in the production of jet fuel, the manufacturer of the gasoline is entitled to a refund or credit of such tax.) Jet fuel procured on AF Form 15 shall be at a price inclusive of the tax on special motor fuels.

11-102 Manufacturers Excise Taxes.

11-102.1 *Motor Vehicles.*

(a) A tax at the rates indicated below is imposed upon the following articles (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

- (i) chassis and bodies of trucks, buses, truck and bus trailers and semitrailers, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer—10 percent; except that this tax does not apply to equipment designed for off-the-road use, such as certain military vehicles (including oxygen or bomb dollies), construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms;
- (ii) chassis and bodies of automobiles, and of trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—10 percent prior to June 22, 1965; 7 percent from June 22, 1965 through December 31, 1965; 6 percent from January 1, 1966 through March 15, 1966; 7 percent from March 16, 1966 through March 31, 1968; 2 percent from April 1, 1968 through December 31, 1968; 1 percent after December 31, 1968; and
- (iii) parts or accessories for trucks and buses—when sold separately from a truck, bus, or other item taxable as indicated in (i) above—8 percent. Parts or accessories are defined to include any article—
  - (A) the primary use of which is to improve, repair, replace or serve as a component part of a truck or bus;
  - (B) designed to be attached to or used in connection with a truck or bus or to add to its utility or ornamentation; or
  - (C) the primary use of which is in connection with a truck or bus whether or not essential to its operation or use.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, a taxable vehicle are treated as parts or accessories whether or not primarily adapted for such use. However, the term "parts or accessories" does not include tires or inner tubes. The tax on parts or accessories does not apply to any article sold for use (or for a single resale for use) as material in the manufacture of, or as a component part of any article whether or not such article is subject to a manufacturers excise tax. The contract price of supplies purchased by any Department shall not include an amount for the manufacturers excise tax on parts or accessories purchased for use in the manufacture of any article.

(b) Bodies are exempt from tax when sold by the manufacturer to a manufacturer of motor vehicles to be sold by the purchaser; however, a chassis manufacturer who purchases a body tax free is required to pay a tax on his sale of the completed vehicle as the manufacturer of both the chassis and the body. A manufacturer of motor vehicle chassis cannot sell such chassis tax free to manufacturers of motor vehicle bodies.

11-102.2 *Tires and Tubes.*

(a) A tax at the rates indicated below is imposed on the following supplies, made wholly or in part of rubber, including synthetic and substitute rubber, sold by a manufacturer, producer, or importer:

(i) tires of the type used on highway vehicles, which includes motor vehicles which are highway vehicles, and vehicles of the type used with motor vehicles which are highway vehicles—10 cents per pound;

(ii) other tires, which are designed to fit the wheel of any type of vehicle capable of transporting a person or burden (other than laminated tires which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent)—5 cents per pound;

(iii) inner tubes, which include any type of air container for pneumatic tires—10 cents per pound on total weight, including air valves and stems;

(iv) laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent—1 cent per pound; and

(v) tread rubber, which includes any material commonly or commercially known as tread rubber or camelback of a type used in retreading or recapping tires—5 cents per pound. An exemption exists for the sale of tread rubber or camelback by a manufacturer to a purchaser for use by that purchaser other than for recapping or retreading tires of the type used on highway vehicles. In addition, if tread rubber, upon which the tax has been paid, is sold for use or is used other than for recapping or retreading tires of the type used on highway vehicles, the manufacturer is entitled to a refund or credit of the tax, *provided*, that the credit under (b) below is not available. The contract price for supplies purchased by any Department will not include an amount for the manufacturers excise tax on tread rubber to the extent that this exemption or refund or credit is available to the manufacturer. In determining weight of taxable tires under (i) and (ii) above, metal rims or rim bases are excluded, but any other material or fastening device that forms a part of the tire is included. The tax imposed under (i) and (ii) above, does not apply to tires which are not more than 20 inches in diameter and not more than 1 - 3 / 4 inches in cross-section, if such tires are of all-rubber construction without fabric or metal reinforcement, nor does it apply to tires of extruded tiring with an internal wire fastening agent.

(b) The exemption for sales for further manufacture does not apply to taxable tires and tubes (see 11-202). However, if tax-paid tires and tubes normally sold in connection with the sale by a manufacturer of a taxable motor vehicle are sold therewith, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturers purchase price on the tires and tubes. The contract price for supplies purchased by any Department shall not include an amount for manufacturers excise tax on tires and tubes to the extent that this credit is available to the manufacturer.

11-102.3 *Gasoline.*

(a) *General.* A tax of 4 cents per gallon is imposed on gasoline sold by a producer or importer. Gasoline means all products commonly or commercially known or sold as gasoline which are suitable for use as a motor fuel. The tax does not apply to the sale of gasoline to a producer, which is defined to include a refiner, compounder, blender, or dealer who sells gasoline exclusively to producers of gasoline.

(b) *Procedure.* Products procured by the Departments which are subject to the tax under (a) above include motor gasoline, clear unleaded gasoline, automotive combat gasoline, and aviation gasoline for reciprocating engines. The procurement of motor gasoline, clear unleaded gasoline and automotive combat gasoline shall be at a price inclusive of the tax unless the product is to be exported to a foreign country or shipped to a possession of the United States or to Puerto Rico, or is to be used as supplies for vessels, in which event the procedure in 11-202(ii) or 11-202(iv) shall be followed. The procurement of aviation gasoline for reciprocating engines, if to be used for the propulsion of military aircraft and if not made on AF Form 15, shall be at a price exclusive of the tax under (a) above, and a vessel-of-war tax exemption certificate shall be furnished in accordance with 11-202(iv). The procurement of aviation gasoline which is not to be used for the propulsion of military aircraft or which is made on AF Form 15 shall be at a price inclusive of the tax on gasoline.

(c) *Refunds.* The ultimate purchaser of gasoline is entitled to a refund of 2 cents per gallon for gasoline used otherwise than as fuel in a highway vehicle, and in certain circumstances to fuel used in such a vehicle. However, activities of the Department of Defense will not apply for such refunds.

11-102.4 *Lubricating Oils.*

(a) *General.* A tax of 6 cents per gallon is imposed on lubricating oil (other than cutting oils) sold by the manufacturer or producer unless sold to another manufacturer or producer of lubricating oils for resale. Lubricating oil means all oils which are either sold for use as a lubricant or are suitable for use as a lubricant. The tax applies unless—

(i) the sale is exempt from tax under 11-202; or

(ii) the oil has been determined by the Commissioner of Internal Revenue to be "seldom used as a lubricant" and is sold for a non-lubricating use; or

(iii) the oil is sold as cutting oil under the procedure described in (c) below.

(b) "*Seldom Used as a Lubricant.*" The following oils have been determined by the Commissioner of Internal Revenue to be "seldom used as a lubricant" and, thus, may be sold tax free: castor oil, petroleum white oil of certain specifications, crude neatsfoot oil, transformer or insulating oil, and a certain product used as an additive to the fuel used in internal combustion engines.

(c) *Cutting Oils.* Oil sold as cutting oil is not subject to the tax if the manufacturer or producer follows one of three procedures. *First*, lubricating oils may be sold tax free by the manufacturer or producer as cutting oil in any case where:

(i) the manufacturer or producer packages the oil in containers of 5 gallons or less furnished by him and labeled by him to indicate use of the oil only in cutting and machining operations on metals;

(ii) any advertising of the oil so packaged and labeled indicates that the oil is for use only in cutting and machining operations on metals; and

(iii) the oil so packaged and labeled is sold by the manufacturer or producer to a purchaser for such use by him or for resale by him for such use.

Second, where the Commissioner of Internal Revenue has determined oil to be suitable for use as a lubricant only in cutting and machining operations on metals, the oil may be sold tax free by the manufacturer or producer as cutting oils, unless the manufacturer has definite knowledge, prior to or at the time of the sale, that the oil is not being purchased for use, or resale for use, in cutting and machining operations on metals. Oils as to which the Commissioner has made such a determination may be sold tax free whether in bulk or otherwise. However, the Commissioner may require that the oil be specifically represented to the purchaser, whether by labeling or otherwise, as being suitable for use only in cutting and machining operations on metals. *Third*, lubricating oils which are sold for use, or for resale for use in cutting and machining operations on metals, but which may not be sold tax free under one of the procedures described above, may be sold tax free, *provided* the manufacturer obtains from the purchaser a properly executed cutting oil certificate. The form set forth in 11-501.3 shall be utilized for this purpose.

(d) *Refunds.* The ultimate purchaser of lubricating oil (other than cutting oils, imported lubricating oils, or rerefined oil) is entitled to a refund of 6 cents per gallon on oil purchased tax paid which is used otherwise than as a lubricant in a highway motor vehicle. However, activities of the Department of Defense will not apply for such refunds.

11-102.5 *Fishing Equipment.* A tax of 10 percent is imposed upon fishing equipment (including parts or accessories sold therewith) sold by a manufacturer, producer, or imported.

11-102.6 *Firearms, Shells, and Cartridges.*

(a) A tax is imposed at the rate of 10 percent upon pistols and revolvers; and at the rate of 11 percent on other firearms, shells, and cartridges sold by a manufacturer, producer, or importer. The tax does not attach when such articles are purchased with funds appropriated for the Military Departments.

(b) Chapter 53A of the Internal Revenue Code imposes a transfer tax and a tax on the manufacturer of machine guns and certain other firearms. Transfer to, or manufacture for, the United States is specifically exempted.

(c) Clearly identified orders or contracts of a Military Department, signed by an authorized officer of such Department, will be accepted in support of the exemption. In the absence of such orders or contracts, a statement signed by an authorized officer of a Military Department that the firearms, shells, or cartridges were purchased with funds appropriated for the Military Departments will be acceptable.

11-103 Excise Taxes on Facilities and Services. Chapter 33 of the Internal Revenue Code imposes excise taxes on communications and certain transportation of persons by air. In general, the tax is based upon the amount paid for the service and is imposed upon the person paying for the service.

11-104 Use Tax on Highway Motor Vehicles.

(a) A tax of $3.00 a year for each 1,000 pounds of taxable gross weight, or fraction thereof, is imposed upon the use of any highway motor vehicle which, together with semitrailers and trailers customarily used in connection with a vehicle of this type, has a taxable gross weight in excess of 26,000 pounds. The full tax is due for any vehicle which is used on the public highways of the United States at any time during the month of July, irrespective whether the vehicle is later removed from highway use. If the first use of a taxable vehicle occurs after the end of July, the tax is computed proportionately from the first day of the month in which the vehicle is first used, through the end of the following June. *For example*, if a vehicle is placed in use during August, 11/ 12 of the total tax is payable. No tax applies to vehicles, even though of a highway type, which are never used on the public highways during the taxable year.

(b) Taxable gross weight is the sum of—

- (i) the actual unloaded weight of the vehicle and any semitrailers and trailers customarily used with such a vehicle, all units fully equipped for service; and
- (ii) the weight of the maximum load customarily carried by all units of a vehicle of this type.

(c) The tax is payable by the person in whose name the vehicle is, or is required to be, registered under the law of any State, or if owned by the United States, by the agency or instrumentality of the United States operating such vehicle. If a tax has been paid for a particular vehicle, no further liability can be incurred in the same taxable year, even though there is a change of ownership of the vehicle.

(d) The Secretary of the Treasury, however, has authorized an exemption for vehicles used by the United States whether or not they are Government owned.

Part 2—Exemptions From Federal Excise Taxes

11-200 Policy. It is the policy of the Department of Defense to take maximum advantage of all exemptions from Federal excise taxes available to the United States and its contractors and to claim all refunds and credits which may be available to the United States and its contractors, except as otherwise provided in Part 1 and Part 2.

11-201 Retailers Excise Taxes. No retailers excise tax is imposed:

- (i) on the sale of special fuels for the exclusive use of any State, any political subdivision thereof, or the District of Columbia, or with respect to the use thereof by any of the foregoing;
- (ii) on the sale of special fuels for export or for shipment to a possession of the United States (which for the purpose of this exemption includes Puerto Rico), and in due course so exported or shipped—
  - (A) This exemption shall be utilized by purchasing on a tax-exclusive basis and furnishing the required proof of exportation or shipment to a possession if:
    - (1) the purchase is substantial, and
    - (2) exportation or shipment to a possession is intended to follow not more than six months after title passes to the Government.
  - (B) To qualify for the exemption of sales for export or for shipment to a possession:
    - (1) the supplies must be identified as having been sold by the manufacturer (if the tax is a manufacturers excise tax) or the retailer (if the tax is a retailers excise tax) for export or shipment to a possession. The words "*for export or shipment to a possession*" incorporated into or stamped on a contract or purchase order are acceptable to the Internal Revenue Service as evidence that the sale is for export or for shipment to a possession. In solicitations and contracts, the terms of which imply that the supplies will be either exported or shipped to a possession (e.g., delivery to a port of embarkation or special packing requirements for overseas shipment) where the purchase is not substantial and it is therefore desired to purchase on a Federal excise tax-inclusive basis, the solicitations and the contract should clearly state that proof of export certificates will not be issued.
    - (2) the supplies must be exported or shipped to a possession in due course. Proof of export or shipment will be furnished to the contractor in the form set forth in 11-501.
- (iii) on the sale of special fuels to retailers for resale (Sales by the United States, or any agency or instrumentality thereof, are not exempt unless specifically made exempt by statute.);
- (iv) on the sale of special motor fuels for use or used in the propulsion of vessels of war or military aircraft of the type enumerated in 11-202(iv);

(v) on the sale of special fuels to a nonprofit educational organization for its exclusive use, or, with respect to the use thereof by a nonprofit educational organization.

11-202 Manufacturers Excise Taxes. No manufacturers excise tax is imposed:

(i) on the sale of any article for use by the purchaser for further manufacture or for resale to a second purchaser for use by such second purchaser in further manufacture (An article shall be treated as sold for use in further manufacture if sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another taxable article to be manufactured or produced. In the case of truck or bus parts and accessories, it is not necessary that the produced article be a taxable article. This exemption does not apply to tires or inner tubes.); or

(ii) on the sale of any article for export, or for shipment to a possession of the United States which for the purpose of this exemption includes Puerto Rico). This exemption shall be obtained only when the purchase is substantial and exportation or shipment to a possession is intended to follow not more than six months after title passes. For proper utilization of this exemption, see 11-201 (ii).

(iii) on the sale of any article for resale to a second purchaser for export. If articles upon which a manufacturers excise tax has been paid are resold by a dealer for export, or for shipment to a possession, the manufacturer is entitled to a credit or refund of the tax paid. If it is economically advantageous to do so, this credit or refund shall be utilized by purchase from a dealer on a tax exclusive basis and execution of the required exemption certificate set forth in 11-501.1.

(iv) on sales of supplies for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of any foreign nation, including aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof, and guided missiles and pilotless aircraft owned or chartered by the United States. This exemption and the exemption from the retailers excise tax on special motor fuels (see 11-201(iv)) shall be utilized by purchasing on a tax-exclusive basis and furnishing the required exemption certificate (see 11-501.2) only if:

(A) the purchase is substantial,

(B) the contracting officer determines at the time of the purchase that the supplies are intended for use in vessels of war or military aircraft, and

(C) the administrative burden of insuring that the supplies are used for exempt purposes does not make use of the exemption uneconomical. Administrative difficulties normally will not exist if the particular supply is suited exclusively for use in vessels or aircraft.

If supplies upon which a manufacturers excise tax has been paid are sold by a dealer for any of the exempt uses enumerated above, the manufacturer is entitled to a credit or refund of the tax paid. If it is economically advantageous to do so, this credit or refund shall be utilized by purchase from a dealer on a tax-exclusive basis and execution of the required exemption certificate set forth in 11-501.2.

(v) on the sale of any article for the exclusive use of a State or local government; and

(vi) on the sale of any article to a nonprofit educational organization for its exclusive use.

11-203 Supplies and Services for the Exclusive Use of the United States. By virtue of action taken by the Secretary of the Treasury, pursuant to Section 4293 of the Internal Revenue Code, exemption is available and shall be obtained, to the extent indicated, from the Federal excise tax on communication services and facilities furnished directly to the United States (as distinguished from being furnished to a Government contractor) and paid for directly by the Government. Such exemption is obtained without any exemption certificate.

TAXES

Part 3—State and Local Taxes

11-300 General. As used in this Section, the term "State and local taxes" includes taxes of the several States, the District of Columbia, the possessions of the United States, Puerto Rico, and political subdivisions thereof.

11-301 Applicability.

(a) As a general rule, purchases made by the Government itself are exempt from State and local sales and use taxes; similarly, personal and real property is exempt from State and local property taxes when the property is both owned and possessed by the Government. These exemptions shall be made use of to the fullest extent available when Government property is located in a State or local tax jurisdiction, or when purchases are made directly by the Government, by asserting the Government's immunity from taxation of its property by States and localities, and in case of purchases, by executing an approved tax exemption certification (see 3-607.4(a) and 11-500(b)).

(b) However, when purchases are not made by the Government itself, but by a prime contractor of the Government or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or in some cases, the transaction may not in fact be expressly exempt from the tax. Similarly, when property is owned by the Government, but the property is in the possession of a contractor or subcontractor on tax day, situations may arise where States or localities believe they may have the right to tax the property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property.

(c) Whenever there is any doubt as to the availability of the Government's immunity or exemption from any State or local tax, the matter shall be handled in accordance with 11-000.

11-302 North Carolina State and Local Sales and Use Tax.

(a) A provision of the North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns in North Carolina to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures and equipment which become a part of or are annexed to any building or structure erected, altered or repaired for such counties and incorporated cities and towns in North Carolina. In *United States v. Clayton*, 250 F. Supp. 827 (1965), appeals dismissed *per curiam* 384 U.S. 154, 156 (1966), it was held that the United States is entitled to the benefit of such provision of the North Carolina Sales and Use Tax Act, but that the United States must resort to the refund procedure of the Act and the regulations to recover what it is due.

(b) The Act provides that in order to receive the refund authorized thereby claimants must file a written request for refund within six months after the close of the fiscal year of the claimant and must substantiate such request for refund by such records, receipts and information as the Commissioner of Revenue may require. The Act further provides that no refunds shall be made on applications not filed within the time allowed thereby and in such manner as the Commissioner may otherwise require. The requirements of the Commissioner are set forth in regulations which, in pertinent part, provide:

"To substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures and equipment by its contractor, the claimant must secure from such contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales and/or use taxes paid thereon. In the event the contractor makes several purchases from the same vendor, such certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices and the sales and use taxes paid thereon. Such statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid thereon by the contractor. Similar certified statements by his subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractors' statements must be shown separately from the State sales or use taxes."

(c) To assure that the United States will be in a position to obtain refunds of North Carolina State and local sales and use taxes to which it is entitled, the clause in 7-602.27 shall be inserted in all construction contracts to be performed in North Carolina, including vessel repair contracts.

(d) The clause in 7-602.27 requires construction contractors, including vessel repair contractors, to submit to contracting officers by November 30 each year certified statements covering North Carolina State and local sales and use taxes paid during the twelve month period which ended the preceding September 30. It will be the responsibility of each contracting officer concerned to assure that contractors comply with this requirement and to obtain the annual refund of North Carolina State and local sales and use taxes to which his activity may be entitled. The application for refund must be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue of the State of North Carolina. Copies of the form to be used in filing refund claims may be obtained by writing to the State of North Carolina Department of Revenue, Raleigh, North Carolina 27602.

TAXES

Part 4—Contract Clauses

11–401 Fixed-Price Type Contracts. The clauses prescribed herein are for use in fixed-price type contracts except those to be performed entirely outside the United States, its possessions, and Puerto Rico.

11–401.1 *Advertised and Certain Negotiated Contracts.*

(a) *Use of Clause.* The clause in 7–103.10(a) shall be used in:

(i) all formally advertised contracts except in construction contracts which do not exceed $10,000;

(ii) all competitively negotiated fixed-price contracts in excess of $10,000;

(iii) all noncompetitive negotiated fixed-price contracts in excess of $10,000, when use of the clause in in 7–103.10(b) is not required; and

(iv) any negotiated fixed-price contract in excess of $2,500 but not in excess of $10,000, at the discretion of the contracting officer. However, this clause shall not be used in purchases made under Section III, Part 6.

(b) *Description.* The clause provides that the contract price includes all applicable taxes. It provides for an increase or decrease in the contract price to compensate for changes in applicable Federal excise taxes or duties, except for social security or other employment taxes. It does not provide for any adjustment in the contract price to compensate for changes in State or local taxes.

11–401.2 *Noncompetitive Negotiated Contracts.*

(a) *Use of Clause.* The clause in 7–103.10(b) shall be used in all noncompetitive negotiated fixed-price contracts in excess of $10,000, when the contracting officer is satisfied (i) that the contract price does not include contingencies for State and local taxes and (ii) that unless this clause is used the contract price will include such contingencies.

(b) *Description.* The clause provides that the contract price includes all applicable Federal, State, and local taxes. It provides for an increase or decrease in the contract price to compensate for changes in Federal excise taxes or duties, and, with some exceptions, for changes in State and local taxes.

11–401.3 *Supplementary Clause for Possessions of the United States and Puerto Rico.* When a contract will be performed in whole or in part in a possession of the United States or in Puerto Rico, and either the clause in 7–103.10(a) or that in 7–103.10(b) is used, the contract shall contain the supplementary clause in 7–103.10(c).

11–401.4 *Matters Requiring Special Consideration.*

(a) A contract may, in accordance with (b) below, provide that the contract price include or exclude a specific tax, or require that the contractor take certain actions with regard to nonpayment, payment, protest or other treatment of a specific tax. Such special treatment may be required, for example, where the State or local tax law has been recently changed, where there is doubt as to the applicability or allocability of the tax, or where the applicability of the tax is being litigated.

(b) The specific provisions described in (a) above shall be used only with the approval of the officials designated in 11-000(b) except in the case of the Air Force, approval may be given by the Department of the Air Force, Office of the General Counsel.

(c) (1) Whether State or local taxes are applicable to a purchase of supplies by the Government may depend upon the place and terms of delivery. For example, if the legal incidence of a State tax is on the vendor, and performance of the contract and delivery to the Government are in that State, the tax may apply. If, however, the contract requires delivery to the Government outside that State, the tax may not apply because the transaction is in interstate commerce. The form of bill of lading used (*i.e.*, Government bill, commercial bill, commercial bill convertible to Government bill at destination) may also affect the taxability of the transaction.

(2) When a contract will be in a substantial amount, available alternative places and terms of delivery should be considered in the light of possible tax consequences.

(d) When Government property is provided under a facilities contract, the contracting officer shall review the facilities contract when negotiating a subsequent supply contract to assure that the contractor is not reimbursed twice for the same taxes.

11-402 Cost-Reimbursement Type Contracts. No specific tax clause is required in any cost-reimbursement type contract. In all such contracts the problem of Federal, State, and local taxes, which presents solely a question of allowability of costs in connection with the performance of cost-reimbursement type contracts is covered in the contract clause in 7-203.4 and is treated in Section XV.

11-403 Foreign Tax Clauses.

11-403.1 *General.*

(a) *Use of Clauses.* Agreements have been made with various foreign countries, including, but not necessarily limited to, Australia, Bahrain, the Bahamas, Barbados, Belgium, Canada, Republic of China, Denmark (including Greenland), Ethiopia, France, Federal Republic of Germany (including West Berlin), Greece, Iceland, Iran, Italy, Japan, Republic of Korea, Luxembourg, the Netherlands, New Zealand, Norway, Panama, the Philippines, Portugal (including the Azores), Saudi Arabia, Spain, Thailand, Trinidad and Tobago, Turkey, the United Kingdom (including Anegada Island, Antigua Island, Ascension Island, Bermuda, British Indian Ocean Territories (Diego Garcia), Mahe Island, and Turks and Caicos Islands), and Yugoslavia, under which tax relief is provided for certain United States defense activities and expenditures. Countries which have not executed such an agreement with the United States may nevertheless grant relief from certain taxes or duties. Accordingly, the appropriate clause of those required by 11-403.2 shall be included in all contracts to be performed by contractors or by foreign governments in foreign countries.

(b) *Exclusion of Specific Taxes from the Contract Price.* The contracting officer shall not attempt to provide to a contractor or prospective contractor information as to foreign taxes or duties normally applicable to the transaction. The contracting officer shall, however, at the time of negotiation of a contract that is to be performed in a country or area listed in Q–301 (*Appendix Q*), obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law. Information obtained by the contracting officer regarding exemptions shall be made available to the contractor or prospective contractor and retained as part of the contract file.

(c) *Tax Exemption Certificates and Other Assistance.* During the administration of the contract the contracting officer shall, as appropriate, issue tax exemption certificates or use other procedures, if available, to assist the contractor in obtaining relief from foreign taxes and duties which were excluded from the contract price. If, in accordance with the appropriate clause of those contained in 11–403.2, the contractor notifies the contracting officer that a tax or duty has been assessed by a foreign government on the contractor under circumstances which could result in an increase in the contract price, the contracting officer shall immediately seek advice and assistance regarding the availability of tax relief from the appropriate Designated Commanding Officer listed in Q–301 (*Appendix Q*). If the tax or duty is being assessed by a foreign country or area not listed in Q–301, the contracting officer shall seek such advice and assistance from either the appropriate Unified Command (*see Q–202*), or the cognizant office of the appropriate Military Department or Defense Agency (*see Q–201*).

11–403.2 *Contract Clauses.*

(a) *Fixed-Price Contracts, Other Than With Foreign Governments.* The clause in 7-103.10(d)(1) shall be included in all fixed-price contracts (other than contracts with foreign governments and into-plane fuel contracts at overseas locations) to be performed wholly or partly in a foreign country, regardless of whether a tax agreement is in effect between the United States and the foreign country. All into-plane fuel contracts at overseas locations shall include a clause substantially as shown in 7-103.10(d)(2).

(b) *Fixed-Price Contracts With Foreign Governments.* The clause in 7-103.10(e) shall be inserted in all fixed-price contracts to be performed by foreign governments.

(c) *Cost-Reimbursed Contracts, Other Than With Foreign Governments.* The clause in 7-204.24(a) shall be inserted in all cost-reimbursement contracts (other than contracts with foreign governments) to be performed wholly or partly in a foreign country.

(d) *Cost-Reimbursement Contracts With Foreign Governments.* The clause in 7-204.24(b) shall be inserted in all cost-reimbursement contracts with foreign governments.

TAXES

Part 5—Tax Exemption Forms

11-500 General.

(a) This Part prescribes forms and procedures to provide evidence appropriate to establish exemption from Federal, State, and local taxes, and the form required to purchase cutting oil at the tax rate of three cents per gallon rather than six cents per gallon.

(b) Unless the contract otherwise requires, evidence of exemption shall not be issued if the amount of taxes on any one invoice or purchase is $10 or less.

(c) With respect to the forms set out in 11-501.2 and 11-501.3, the Internal Revenue Service will accept one certificate covering all orders under a single contract for a specified period not exceeding four calendar quarters.

11-501 Federal Excise Taxes. The forms of certificates set forth in 11-501.1 through 11-501.3 may be reproduced locally.

11-501.1 *Certificate of Export to a Possession or to Puerto Rico.* The following form of exemption certificate shall be used as proof of exportation or shipment to a possession or Puerto Rico, in accordance with 11-201(ii) and 11-202(ii).

CERTIFICATE OF EXPORT

(For use by purchasers of articles for export or shipment to a possession under Sections 4056 and 4221 (a)(2), Internal Revenue Code of 1954)

........................19.........

.... *(Name of Contractor)*

The undersigned does hereby certify that .... *(Quantity and description of supplies)*..................................
which were purchased for export, or for shipment to a possession of the United States or to Puerto Rico, under Contract No. ...., were in fact exported to a foreign country, or shipped to a possession of the United States or to Puerto Rico, and a copy of the export bill of lading No. .... or loading manifest No. .... pursuant to which the supplies were shipped, is being retained in the files of . ... *(Official address of office).*

..........................*(Signature)*
..........................*(Title)*
..........................*(Address)*

This certificate is not intended for use as proof in claiming drawback of import taxes.

11-501.2 *Exemption Certificate for Supplies for Vessels of War.* The following form of exemption certificate shall be used in claiming an exemption for supplies for vessels of war (including aircraft), in accordance with 11-201(iv) and 11-202(iv).

EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels under Sections 4041(e) and 4221(a)(3), Internal Revenue Code of 1954).

.... *(date)*

The undersigned hereby certifies that he is an authorized agent of the United States of America and that the article or articles specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of a foreign nation, including aircraft owned by the United States or by a foreign nation and constituting a part of the armed forces thereof.

The undersigned understands that if the article or articles are used for any purpose other than as stated in this certificate, or are resold or otherwise disposed of, the purchaser must report such fact to the manufacturer; or, in the case of special motor fuel, that if the fuel is sold or used otherwise than as stated in this certificate and for a taxable purpose specified in Section 4041(b) of the Internal Revenue Code, liability for the tax upon such sale or use will attach. The undersigned also understands that the purchaser must be prepared to establish by satisfactory evidence the purposes for which the article was used.

The fraudulent use of this certificate for the purpose of securing exemption from the payment or adjustment of taxes will subject the guilty party to a fine of not more than $10,000 or imprisonment for not more than five (5) years, or both, together with costs of prosecution.

.... (*Signature*)
.... (*Title*)
.... (*Address*)

11-501.3 *Cutting Oil Certificate.* The following form of certificate shall be used by the purchaser of cutting oil, in accordance with 11-102.4(c).

CUTTING OIL CERTIFICATE

(*For use by purchaser of lubricating oil subject to tax under Section 4091 of the Internal Revenue Code of 1954, for use by purchaser in cutting and machining operations on metals*)

.... *Date*

Contract:
Contract Period:
Contractor:
Product:
End Use:

The undersigned certifies that he is an authorized agent of the United States of America and that the oil covered by the contract identified above is purchased for the use indicated as a lubricant in cutting and machining operations on metals.

The undersigned understands that the purchaser must be prepared to establish by satisfactory evidence the actual use or disposition made of such oil, and that upon its use of the oil for a lubricating purpose other than in cutting and machining operations on metals, or upon its sale or other disposition of the oil, it is required to notify the manufacturer.

The fraudulent use of this certificate for the purpose of purchasing oil tax free, rather than subject to tax at the rate of 6 cents a gallon, will subject the guilty party to a fine of not more than $10,000 or imprisonment for not more than five (5) years, or both, together with the costs of prosecution.

.... (*Signature*)
.... (*Title*)
.... (*Address*)

11-502 State and Local Taxes.

11-502.1 *Types of Evidence of Exemption.* Evidence appropriate to establish exemption or immunity from State or local taxes will vary depending upon the grounds of exemption or immunity claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence includes but is not limited to the following:

(i) U.S. Government Tax Exemption Certificate (Standard Form 1094);
(ii) a copy of the contract or a portion thereof;
(iii) shipping documents indicating that shipments are in interstate or foreign commerce;

(iv) a State or local form indicating that supplies or services are for the exclusive use of the United States; or

(v) any other State or locally required form; certificate, or document to establish general or specific exemption.

11-502.2 *When Evidence of Exemption Is To Be Furnished.*

(a) Unless there does not exist any reasonable basis to sustain a claimed exemption, a contractor or vendor will be furnished evidence of exemption under a:

(i) contract which contains the clause prescribed in either 11-401.1 or 11-401.2 in accordance with the terms of those clauses;

(ii) cost-reimbursement type contract at the request of the contractor or at the discretion of the contracting officer; or

(iii) contract or purchase order which contains no provision regarding taxes, at the request of the contractor or at the discretion of the contracting officer, if the contractor warrants that the contract price does not include the tax, or if he consents to a reduction in the contract price if the evidence of exemption is accepted by the taxing jurisdiction.

(b) In case of disagreement as to whether there exists a reasonable basis upon which to sustain exemption of any transaction, the matter should be resolved in accordance with 11-000.

SECTION XII—CONTRACTOR INDUSTRIAL LABOR RELATIONS

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SECTION XII

CONTRACTOR INDUSTRIAL LABOR RELATIONS

12-000 Scope of Section. This Section (i) deals with general policies regarding contractor industrial labor relations, so far as they relate to Government contracts, (ii) sets forth certain pertinent labor laws and requirements, indicating in connection with each its applicability and any procedures thereunder; and (iii) prescribes the contract clauses with respect to each labor law or requirement. Labor standards and clauses which are applicable only to construction contracts are treated separately in Section XVIII, Part 7.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 1—Basic Labor Policies

12-101 Labor Relations.

12-101.1 *General.*

(a) Military procurement depends on industry and labor for uninterrupted performance of contracts to meet defense objectives. Each Department must establish and maintain sound working relationships with industry and labor to assure prompt receipt of information involving labor relations matters which may affect adversely military procurement and to assure that procurement actions are carried on without delay and at reasonable costs to the Government.

(b) All problems arising out of the industrial labor relations of contractors and all communications with contractors, labor organizations or Federal agencies relative thereto shall be handled in accordance with the procedures prescribed in this Section. Industrial security matters concerning contractor employees are governed by the DoD Industrial Security Regulation 5220.22R and the DoD Industrial Security Manual 5220.22M (see 1-320).

(c) Approval of the Office of the Assistant Secretary of Defense (I&L) will be obtained on major policies relating to all labor relations matters. Recommendations for plant seizure or injunctive action relating to potential or actual work stoppages and resolution of inter-service disagreements are examples of major policy actions.

(d) Authorization shall be obtained from Departmental headquarters prior to initiating any contact on labor relation matters with a national office of any labor organization, Government department, agency or other governmental organization and shall promptly notify such headquarters of each contact by the national office of any of these organizations.

(e) All Departments shall remain impartial in, and refrain from taking a position on the merits of, any labor dispute, and shall refrain from the conciliation, mediation or arbitration of any such dispute. They shall, however, act to avoid or minimize the impact of labor disputes on important procurement by assuring, to the extent practicable, that the parties to the dispute utilize all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, National Mediation Board and other appropriate Federal, state, local, or private agencies.

(f) Each Department shall take other action in connection with labor relations problems which is consistent with its procurement responsibilities, as for example:

- (i) giving notice of the existence of a labor dispute, which affects, or threatens to affect, procurement of supplies or services, to the Government agency which has responsibility for conciliation, mediation, arbitration, or other action with respect thereto;
- (ii) advising the Government agency responsible for action with respect to labor disputes, or the parties to a labor dispute, of factual information pertaining to procurement of the supplies or services involved, to the extent consistent with security regulations;
- (iii) advising the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency of the proposed

award of a new contract, or the increase in quantities or scope of work under existing contract, totaling $5,000,000 or more to be performed at a facility involved in an actual or imminent work stoppage. The Headquarters, Labor Relations Office of the Department concerned, will monitor information concerning proposed contract awards by using standard Departmental reports of prior notification of contract awards. The reports will be used to initiate consultation with the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency. After such consultation, a determination will be made whether the announcement of the contract award would have a detrimental affect on labor-management negotiations. If no mediation agency is involved in the labor-management negotiations, the Labor Relations Office at Departmental level will provide advice in the above determination; or

(iv) seeking to obtain such voluntary agreement between management and labor as will permit, notwithstanding the general continuance of the dispute, uninterrupted procurement of military supplies and services, *provided* such activity does not involve the Department in the merits of a labor difference or dispute.

12-101.2 *Contract Pricing and Administration.*

(a) Nothing in 12-101.1 should be construed to relieve a contracting officer from his responsibility to achieve efficient contract pricing and administration.

(b) Contractor labor policies and compensation practices, whether or not they are provided for in labor-management agreements, are not an acceptable basis for allowances of cost in cost-reimbursement-type contracts or for recognition of costs in pricing fixed-price-type contracts if and insofar as they result in unreasonable costs to the Government. Section XV, particularly 15-205.6(a) explains that the term "unreasonable costs" includes costs resulting from practices that are discriminatory against the Government or unwarranted in the context of the particular contract work.

(c) In some cases, labor disputes may give rise to work stoppages which cause delays in the timely performance of important contracts. The contracting officer should impress on the contractor that he will be held accountable for delays that are reasonably avoidable. It should be emphasized that the standard contract clauses dealing with default, excusable delays, etc., do not relieve the contractor for delays that are within his or his subcontractors' control, such as may be the case with delays precipitated by an unfair labor practice of the contractor. In addition, a delay caused by a strike which the contractor could not reasonably prevent can be excused only to the extent that it does not go beyond the point at which a reasonably diligent contractor could resume the delayed performance by ending the strike by such means as:

(i) filing a charge with the National Labor Relations Board so as to permit the NLRB to seek injunctive relief in court;

(ii) recourse to the procedures of the Federal Mediation and Conciliation Service, or other available Government procedures; or

(iii) use of the National Joint Board for the Settlement of Jurisdictional Disputes, or other private Boards or organizations for the settlement of disputes.

(d) Strikes will normally result in changing patterns of cost incurrence. Certain costs may actually increase because of a strike, *e.g.*, guard services and fees paid to attorneys; other costs incurred during a strike may not fluctuate *i.e.*, "fixed costs" such as rent and depreciation, but because of reduced production become a higher proportion of the unit cost of items produced. All costs incurred during a strike shall be carefully examined (i) so that acceptance of costs during a strike period sustains the Government's position of impartiality concerning the strike (see 12-101.1(e)), and (ii) as to allowability, reasonableness, and allocability in accordance with Section XV, Part 2, to assure recognition of only those costs necessary for the performance of the contract in accordance with the Government's essential interest.

(e) The normal and regular functions of inspection at the plant of a military supplier, as required during the performance of a contract, shall be continued without regard to the existence at such plant of a labor dispute, strike, or picket line. Inspection should not be performed if there is reason to believe that the physical safety of the individual inspector may be endangered thereby. It is emphasized that inspection personnel in the discharge of their duties, consistent with the policy of 12-101.1(e), shall refrain from taking or expressing a position upon the merits of any dispute between labor and private management.

12-101.3 *Reporting of Labor Disputes.*

(a) Any labor dispute affecting defense procurement will be reported by the Contract Administration Office (CAO). The CAO shall obtain and transmit information relating to potential or actual labor disputes which may interfere with performance of any contract within his cognizance.

(b) When an interference is likely to occur, the CAO shall notify the purchasing offices, their Heads of Procuring Activities and their Departmental headquarters labor relations office (for the Army, the Labor Advisor, OASA (I&L); for the Navy, Chief of Naval Material, Attn: Labor Relations Advisor (MAT 08C4L); for the Air Force, Headquarters USAF, LGP, Attn: Labor Relations; for the Defense Logistics Agency, HQ DLA CAS Labor Advisor, Attn: DCAS-HR and in addition for DLA procurements one copy to DLAH-PRS; for the National Security Agency, Director of Procurement; for the Defense Communications Agency, the Counsel; for the Defense Nuclear Agency, the Chief, Office of Procurement; and for the Defense Mapping Agency, Staff Director of Logistics). Further dissemination of labor dispute information shall be made by the CAO as requested by the Departmental headquarters labor relations offices.

(c) Labor disputes should be reported on DD Form 1507, Work Stoppage Report. An initial report should be submitted when a work stoppage due to a labor dispute is imminent or when such work stoppage occurs and thereafter when a significant change occurs in the dispute situation. This reporting requirement is assigned RCS DD I&L (AR) 1153.

12-101.4 *Impact of Labor Disputes on Defense Programs.*

(a) Each Department shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements, considering among others the following factors:

(i) whether the dispute involves a product, project, or service which must be obtained in order to meet schedules for urgently needed military programs or requirements; or

(ii) whether alternative sources of supply for the product, project, or service involved are reasonably available to fulfill the requirement or program in time to maintain essential military schedules.

(b) Within each Department, the procuring activity involved shall obtain and develop data reflecting the impact of a dispute on requirements and programs. Upon determining the impact, the Head of the Procuring Activity shall submit through appropriate channels a report of his findings, together with recommendations, to the headquarters labor relations office originally notified pursuant to 12–101.3(b). Such reports shall be in narrative form and shall include the following information:

(i) location of dispute and name of contractor or subcontractor involved;

(ii) a statement indicating the degree of impact, relating specific items or construction involved to the programs or requirements affected;

(iii) identity of alternate sources available to furnish supply or service within the time required; and

(iv) a description of any action taken to reduce impact.

(c) Reports of impact shall be made to the Office of the Assistant Secretary of Defense (Installations and Logistics):

(i) upon specific request; or

(ii) when considered by the Department to be of sufficient urgency to warrant the attention of the Assistant Secretary of Defense (Installations and Logistics).

(d) Reports submitted in accordance with (c) above shall be developed by the Headquarters Labor Relations Office concerned and shall cover the following areas of fact, as appropriate:

(i) *Description of Military Program, Project or Service*—Identify item, project, or service which will be or is being affected by the work stoppage, describing its normal use and current functions in combat, combat support, or deterrent operations. For components or raw materials identify the end item(s) for which used.

(ii) *Requirements and Assets*—State requirements and assets in appropriate detail in terms commonly used by the DoD component.

  (A) For *production programs* include requirements for each using military service. Where applicable, state in detail production schedules, inventory objectives, assets against these objectives, and critical shortages. For spares and highly expendable items, such as ground and air ammunition, show usage (consumption) rates and assets in absolute terms and in terms of daily, weekly, or monthly supplies. For components, include requirements for spares.

  (B) For *projects* describe the potential adverse effects of a delay in meeting schedules and explain how a security disadvantage would result from such a delay. Attention should be given to feature any relative loss in balance of strength vis-a-vis potential enemies' capabilities.

(C) For *services*, describe how a loss or interruption affects ability to support defense operations in terms of traffic requirements, assets, testing programs, etc.

(iii) *Possible Measures to Minimize Strike Impact*—Describe:

(A) capabilities, if any, to substitute items or to use alternate sources. (Note how many other facilities are available and the relative capabilities of such facilities in meeting total requirements.);

(B) how much time would be required to replace the loss of the facilities or service affected by a work stoppage; and

(C) feasibility of transfer of assets from theater to theater to relieve deficits in some areas of urgency.

(iv) *Conclusion: Impact on Operations of a 15–30, of a 30–60, and of a 60–90 Day Work Stoppage*—Degree of criticality of a program, project or service resulting from a work stoppage will be projected on a calendar basis, indicating the increased impact, if any, as the stoppage lengthens. Criticality is measured by the time required for the work stoppage to have an effect on operational capability. This time must be stated in terms of days.

12–101.5 *Movement and Removal of Items from Facilities Affected by Work Stoppages.*

(a) It is the policy of the Department of Defense with respect to the movement of items from facilities affected by work stoppages to avoid the use of force or the appearance of force and to prevent the occurrence of incidents which will detrimentally affect relations with labor and management.

(b) Materials which the contractor is unable to deliver because of a work stoppage at the plant, and the delivery of which is urgent and critical to an important program, may be obtained in accordance with procedures set forth below:

(i) The procuring contracting officer, upon the direction of the Departmental Headquarters Labor Relations Office, shall furnish a written request for removal of the material to Contract Administration Office (CAO) having cognizance over the plant. The Commander of the cognizant CAO or his representative shall attempt to work out an arrangement agreeable to both management and the labor representatives involved for shipment by normal means of urgently required material. Prior to making any removal, the Departmental Headquarters Labor Relations Office will solicit the opinion of the National Office of the Federal Mediation and Conciliation Service or other appropriate mediation agency as to the effect the movement of items would have on negotiations. The procuring contracting officer's request will include the following:

(A) a statement as to the urgency and criticality of the system, subsystem or item needed;

(B) description of items to be moved (Nature of item, amount, approximate weight and cubic feet, contract number, item number, etc.);

(C) mode of transportation by which items are to be moved if different from contract and whether by Government or commercial bill of lading; and

(D) destination of material if different than contract.

(ii) If an arrangement in accord with (i) cannot be made, the Commander of the CAO or his representative, after obtaining approval from the Departmental Headquarters Labor Relations Office, may seek the concurrence of parties to the dispute to permit movement of the required material by military vehicles with military personnel to the extent needed. On receipt of such concurrences, he may proceed to make necessary arrangements to move the material.

(iii) If satisfactory arrangements under (i) and (ii) cannot be made, the matter shall be referred to the Departmental Headquarters Labor Relations Office with the information required by 12-101.4(b). If that office is unsuccessful in obtaining the voluntary concurrences of the parties for movement of the material involved and further action to obtain the material is deemed necessary, the matter shall be referred to the DASD (Production Engineering and Materiel Acquisition), Office of the Assistant Secretary of Defense (Installations and Logistics).

(iv) Upon review and verification that the material is urgently or critically needed and cannot be moved with the consent of the parties, the OASD (Installations and Logistics) may request the Secretary of the Department to order removal of the material from the plant or plants involved.

(c) When the requirements of two or more departments are or may become involved in the movement or removal of the material, the CAO shall coordinate such requirements with the departments concerned.

12-101.6 *Procurement of Stevedoring Services During Labor Disputes.* Where stevedoring services are furnished by a contractor to a Department, and the performance under the contract, although urgently required, is delayed through a labor dispute, the following procedures shall be utilized in the order of priority listed. Each successive procedure shall be used only when the preceding steps are inadequate.

(i) An attempt shall be made to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(ii) Vessels shall be diverted to alternate ports able to provide necessary stevedoring services.

(iii) Consideration shall be given to contracting with reliable alternative sources of supply within the stevedoring industry.

(iv) Civil Service stevedores shall be utilized to perform the work theretofore performed by contract stevedores.

(v) Military personnel shall be utilized to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(vi) When the exigencies of a situation require deviation from the procedures outlined above, Departmental labor relations headquarters offices set forth in 12-101.3(d) shall be notified promptly. Such offices shall report the action taken to the Industrial Relations Advisor, OASD (I&L).

12-102 Overtime.

12-102.1 *Definitions.* As used throughout this paragraph 12-102:

(a) *Normal workweek and normal workday* mean, generally, a workweek of 40 hours and a workday of 8 hours, respectively; *provided,* that in any area outside the United States, its possessions, and Puerto Rico, a workweek longer than 40 hours, or a workday longer than 8 hours, will be considered normal (i) if such workweek or workday does not exceed that which is normal for such area, as determined by local custom, tradition, or law and (ii) if hours worked in excess of 40 in such workweek, or 8 in such workday, are not compensated at a premium rate of pay.

(b) *Overtime* means time worked by a contractor's employee in excess of the employee's normal workweek or normal workday.

(c) *Overtime premium* means the difference between the contractor's regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium which is the difference between the compensation paid to an employee at the contractor's regular rate of pay for the base shift and that paid at the regular rate of pay for extra-pay shift work.

12-102.2 *Policy.* It is the policy of the Department of Defense that all contracts will be performed, so far as practicable, without the use of overtime, particularly as a regular employment practice, except where lower overall costs to the Government will result. Contractors should utilize what ever work schedule results in the lowest overall cost to the Government consistent with contract delivery and performance requirements. Extra-pay shifts and multi-shift work should be scheduled, as required, to achieve these objectives. In the negotiation of contracts, overtime premiums will be recognized in establishing a fixed price or estimated cost only to the extent consistent with the needs of the Government for the supplies or services being procured.

12-102.3 *Approval of Overtime Premiums.*

(a) Approval of overtime premiums is required:

(i) by the contracting officer under time and material and labor-hour contracts (see paragraph (a) (3) of the clause in 7-901.6); and

(ii) by the approving official (see 12-102.4(e)), (A) prior to execution of cost reimbursement type contracts containing the *Payment for Overtime Premiums* clause, for any overtime to be included in paragraph (d) of the clause, and (B) prior to modification of such a contract for any increase in the overtime included in paragraph (d) of the clause.

(b) Approval of overtime premiums under contracts other than those referenced in (a) above shall not be required.

12-102.4 *Approval of Overtime Premiums in Certain Cost-Reimbursement Type Contracts.*

(a) To prevent uneconomic use of overtime, at Government expense, the clause in 7-203.27 shall be included in all cost-reimbursement type contracts in excess of $100,000, except cost-reimbursement type contracts for the operation of vessels and cost-plus-incentive-fee contracts having a cost incentive which provides for a swing from target fee of at least plus or minus 3% and a contractor's share of cost of at least 10%. Whenever this clause is used, the procedural requirements of this 12-102.4 shall be followed.

(b) An amount for overtime premiums at Government expense may be included in paragraph (d) of the *Payment for Overtime Premiums* clause when the use of overtime has been approved by an official designated as provided in (e) below. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant which have been individually evaluated and the necessity for overtime confirmed, will be considered for approval, and then only for overtime premiums not reimbursable under the exceptions contained in paragraph (a) (ii) of the clause. Approval may be granted when such official determines in writing that overtime is necessary:

(i) to meet delivery or performance schedules, and such schedules are determined to be consistent with essential military objectives;

(ii) to make up for delays beyond the control and without the fault or negligence of the contractor; or

(iii) to eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way.

(c) When, during negotiation, it becomes apparent that overtime will be required during the performance of the contract and the contract will contain the *Payment for Overtime Premiums* clause, the PCO shall secure from the contractor a request substantially in accordance with the request procedures in paragraph (c) of such provision for all overtime to be used during the life of the contract, to the extent that it can be estimated with reasonable certainty. If the contemplated overtime premium could affect the costing of other work performed by the contractor or is significant in amount, the PCO may avail himself of the advisory services of the cognizant Defense Contract Audit Agency office to determine the proper accounting treatment of such premium. The PCO shall request from the appropriate official designated, as provided in (e) below, approval for overtime premiums at Government expense. Upon receipt of such approval, the PCO shall complete paragraph (d) of the clause.

(d) During contract performance, requests for overtime, submitted pursuant to the *Payment for Overtime Premiums* clause, will be submitted to the ACO who shall evaluate the need for such overtime and forward the request, with his comments, as expeditiously as possible to the PCO. Thereupon, the PCO, if he desires that the requested overtime be approved in whole or in part, shall, unless a prior authorization is sufficient to cover the overtime requested, request the approval of the appropriate official designated as provided in (e) below and, as expeditiously as possible, modify paragraph (d) of the clause to reflect the approval.

(e) The Deputy or Assistant Deputy for Materiel Acquisition, Office of the Assistant Secretary of the Army (Installations and Logistics), for the Army; the Deputy Chief of Naval Material (Procurement), for the Navy; the Director of Procurement Policy, Headquarters, USAF, for the Air Force; the Executive Director for Procurement and Production, for the Defense Supply Agency; the Director of Procurement, for the National Security Agency; the Assistant to the Director for Administration, for the Defense Communications Agency; the Chief, Office of Procurement, for the Defense Nuclear Agency; and the Staff Director of Logistics, for the Defense Mapping Agency; are authorized, without power of delegation, to designate without power of redesignation, officers and civilian officials for the purpose of approving overtime premiums at Government expense. Such approval may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable, and shall ordinarily be prospective, but may be retroactive when justified by the circumstances. When two or more purchasing offices have current contracts at a single facility, and the approval of overtime by one purchasing office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a purchasing office may rely on the contractor's statement that such approval will not affect the performance, or payments in connection with any contract of another purchasing office.

12-102.5 *Contract Administration.*

(a) The cost of overtime premiums under the *Payment for Overtime Premiums* clause and all overtime premiums under cost-reimbursement type contracts which do not contain the clause, shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under the contract, in accordance with 15-201.

(b) In administration of contracts under which overtime has been approved pursuant to 12-102.4, the ACO and the cognizant audit activity shall review periodically the use of such overtime to assure that it is reasonable and properly allocable to work under the contract.

12-102.6 *Payment of Overtime Premiums Clause.* The clause in 7-203.27 shall be used when required by 12-102.4(a).

12-102.7 *Construction Contracts.* See 18-111 regarding expediting actions involving additional costs.

12-103 Federal and State Labor Requirements.

12-103.1 *General.* The Department of Defense shall cooperate and encourage contractors to cooperate, to the fullest extent practicable, with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor.

12-103.2 *Applications for Relaxation of Requirements.*

(a) Departments shall not initiate applications of any kind for suspension or relaxation of labor requirements. They may, however, support such applications by contractors or suppliers when all of the following circumstances and conditions have been met:

(i) the interested contractor or supplier has filed his application for relaxation of the laws, orders or regulations involved with the appropriate Governmental official charged with the enforcement of such labor requirements applicable to the contract involved;

(ii) the required products or services are in short supply and unless the application is granted, production schedules for critically needed military material cannot be met;

(iii) there is no alternative source of supply reasonably available to furnish the products or services within the period of time delivery is required;

(iv) there is no practicable possibility of taking remedial action (such as recruiting, training, and more effective utilization of manpower) as an alternative to relaxation of applicable Governmental labor requirements;

(v) the apparent supply of labor, and in particular of critical skills, is limited, and it is not practicable to set up new production lines or to use additional facilities as an alternative to the relief requested; and

(vi) the granting of the application will not result in an excessive increase in hours or work, an unreasonable curtailment of rest and lunch periods, an undesirable impairment of working conditions, or otherwise adversely affect the productivity of the facility involved.

(b) Requests for authority to support an application on behalf of a contractor or supplier shall be submitted to the Labor Advisor, OASA (I&L) for the Army; Chief of Naval Material for the Navy; HQUSAF (LGP, Attn: Labor Relations) for the Air Force; Directorate, Procurement and Production DLAH-P, for the Defense Logistics Agency; the Director of Procurement, for the National Security Agency; Chief, Contract Management Division (Code 260), for the Defense Communications Agency; Chief, Office of Procurement, for the Defense Nuclear Agency; and Staff Director of Logistics, for the Defense Mapping Agency. Such requests shall contain the following information:

(i) the facilities and services involved and affected;

(ii) provision(s) of law which require relaxation;

(iii) criticality or relative scarcity of the material;

(iv) circumstances necessitating the relaxation (for example, a shortage in the local supply of skilled labor);

(v) remedial action being taken by the manufacturer (*e.g.*, training, recruiting, more effective utilization of manpower);

(vi) the most limited relaxation of the requirement necessary for completion of the specific work; and

(vii) the approximate period of time required for completion of the work.

(c) Consistent with the limitations of security and the foregoing requirements, contract information may be furnished to the appropriate Governmental official, upon his request, in connection with an application of a contractor or supplier for relaxation of a labor requirement as to the execution of a contract in pursuance of a military procurement program.

12-104 Reserved.

12-105 Reserved.

12-106 Supply, Services, or Maintenance Contracts Involving Construction Work. The requirements of statutes, regulations, and determinations establishing construction labor standards are set forth in Section XVIII, Part 7. In many instances, construction items under supply, service, maintenance, research and development, and other nonconstruction contracts are not subject to the requirements of Section XVIII, Part 7, although this is not necessarily always the case simply because the construction work is to be performed under a contract which also calls for nonconstruction work. This paragraph 12-106 governs the applicability of those requirements to contracts involving both construction and nonconstruction work.

12-106.1 *When Construction Labor Standards and Clauses Are Applicable.*

(a) Contracts involving both construction and nonconstruction work are in general subject to the requirements of Section XVIII, Part 7, and must include the appropriate clauses in 7-602.23 if:

(i) the contract contains specific requirements for substantial amounts of construction work, or it is ascertainable at the contract date that a substantial amount of construction work will be necessary for the performance of the contract (the word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(ii) the construction work is physically or functionally separate from, and as a practical matter is capable of being performed on a segregated basis from, the other work called for by the contract; and

(iii) the requirements are otherwise applicable to the contract (see 18-701).

(b) Even though the contract contains construction labor clauses pursuant to (a) above, the nonconstruction work under the contract is not subject to those clauses, because they provide that they are applicable to the contract work only to the extent that the work is subject to the labor standards statutes involved.

12-106.2 *When Construction Labor Standards and Clauses Are Not Applicable.* Construction work is exempt from the requirements of Section XVIII, Part 7, when (i) it is to be performed in support of nonconstruction work, such as manufacturing and furnishing of supplies, and (ii) in the circumstances of the particular case the construction work is so merged with the nonconstruction work, or so fragmented in terms of the locations or time spans in which it is to be performed, that it cannot be segregated as a separate contractual requirement for construction. Accordingly, contracts involving both nonconstruction work and this type of construction work are not subject to the requirements of Section XVIII, Part 7.

12-107 Labor Standards Enforcement Report.

(a) A semiannual report is required on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act. The reporting periods are 1 October through 31 March and 1 April through 30 September. The reports shall be prepared by the contract administration office and will be submitted through channels so as to reach the labor relations advisor of the Headquarters concerned not later than 25 days after the close of the reporting period. Within the next five days a report will be submitted by the Headquarters to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(b) The report shall contain the following information, as applicable, for construction work subject to the Davis-Bacon Act and Contract Work Hours and Safety Standards Act:

(i) Period covered;

(ii) Number of prime contracts awarded;

(iii) Total dollar amount of prime contracts awarded;

(iv) Number of contractors/subcontractors against whom complaints were received—
  (A) Prime,
  (B) Subcontractors;
(v) Number of investigations—
  (A) Undertaken,
  (B) Completed;
(vi) Number of contractors/subcontractors found in violation—
  (A) Prime,
  (B) Subcontractors;
(vii) Amount of wage restitution found due—
  (A) Davis-Bacon Act,
  (B) Contract Work Hours and Safety Standards Act;
(viii) Number of employees due wage restitution under—
  (A) Davis-Bacon Act,
  (B) Contract Work Hours and Safety Standards Act;
(ix) (A) Amount of liquidated damages assessed under the Contract Work Hours and Safety Standards Act,
  (B) Number of contracts involved;
(x) Number of complaints received from—
  (A) Labor unions,
  (B) Individual employees,
  (C) Department of Labor, and
  (D) Others, including Congressional;
(xi) Number of employees and the total amount paid or withheld under—
  (A) Davis-Bacon Act,
  (B) Contract Work Hours and Safety Standards Act,
  (C) Copeland Act;
(xii) Prework activities—
  (A) Number of conferences held,
  (B) Letters sent;
(xiii) Number of compliance checks performed;
(xiv) Number of employees interviewed.

(c) This report has been assigned Reports Control Symbol 1482-DOL-SA.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 2—Convict Labor

12-200 Scope of Part. This Part sets forth policies and procedures regarding the employment of prison inmates in the performance of Government contracts.

12-201 General. Executive Order 11755 of December 29, 1973 states:

> "The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services."

12-202 Basic Requirement. Pursuant to the policy set forth in the Act of February 23, 1887 (18 U.S.C. 436), and in accordance with the requirements of Executive Order 11755 of December 29, 1973, all contracts involving the use of appropriated funds entered into by any Department for performance in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands shall, unless otherwise provided by law, contain a clause prohibiting the employment of persons undergoing sentences of imprisonment which have been imposed by any court of the heretofore cited geographical areas.

12-203 Applicability.

(a) The requirement set forth in 12-202 applies, except as stated in this paragraph 12-203, to all contracts involving the employment of labor which are performed in any state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(b) The requirement does not apply to contracts:

(1) Subject to the provisions of the Walsh-Healey Public Contracts Act (see Section XII, Part 6) which contains its own requirement that "no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract."

(2) For the purchase of supplies or services from Federal Prison Industries, Inc.

(3) For the purchase from any State prison of finished supplies which may be secured in the open market or from existing stocks as distinguished from supplies requiring special fabrication.

(c) The clause does not prohibit the employment by a contractor in the performance of such contracts of:

(1) Persons on parole or probation.

(2) Persons who have been pardoned or who have served their terms.

(3) Federal prisoners authorized by the Attorney General under 18 U.S.C. 4082(c)(2) to work at paid employment in the community during the term of their imprisonment and Non-Federal prisoners where the Attorney General has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755 if:

(i) the worker is paid or is in an approved work training program on a voluntary basis;

(ii) representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(iv) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

(d) With regard to the certification by the Attorney General to employ Non-Federal prisoners as cited in subparagraph 12-203(c)(3) above, Executive Order 11755 also provides that after notice and opportunity for hearing, the Attorney General shall revoke any such certification if he finds that the work-release program of the jurisdiction involved is not being conducted in conformity with the requirements of the order or with its intent or purpose.

12-204 Contract Clause. In accordance with this Part 2 of Section XII, insert the clause in 7-104.17.

Part 3—Contract Work Hours and Safety Standards Act

12-300 Scope of Part. This Part deals with the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) applicable to contracts other than construction contracts as defined and covered in Section XVIII, Part 7.

12-301 Statutory Requirement. In accordance with the requirement of the Contract Work Hours and Safety Standards Act (40 U.S.C. Code 327-333), certain contracts entered into by any Department shall contain a clause to the effect that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than eight hours in any one calendar day or 40 hours in any workweek unless such laborer or mechanic is compensated for all hours worked in excess of eight hours in any one calendar day or 40 hours in any workweek at not less than one and one half times the basic rate of pay.

12-302 Applicability. The requirement set forth in 12-301 applies, except as stated below, to all contracts (including, for this purpose, basic ordering agreements and blanket purchase agreements (see 3-410.2 and 3-605)) which may require or involve the employment of laborers or mechanics, including guards and watchmen, either by a contractor or by any subcontractor. The requirement does not apply to the following kinds of contracts:

(i) contracts (or portions thereof) to be performed in a foreign country or within territory under the jurisdiction of the United States other than the following: a state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, and Johnston Island, to the extent that such contracts (or portions thereof) may require or involve the employment of laborers or mechanics there;

(ii) contracts (or portions thereof) for supplies in connection with which any required services are merely incidental to the sale and do not require substantial employment of laborers or mechanics;

(iii) contracts (or portions thereof) for materials or articles (other than armor or armor plate) usually bought in the open market (although the requirement does apply, and the contract must so provide, with respect to any contract involving the performance of any class work which is ordinarily, and not merely occasionally or to a limited extent, performed by the Government);

(iv) contracts (or portions thereof) subject to the provisions of the Walsh-Healey Public Contracts Act (see Part 6 of this Section); and

(v) contracts of $2,500 or less in aggregate amount. In arriving at the aggregate amount involved, there must be included all property and services which would normally be grouped together in a single transaction. In the case of a basic ordering agreement or blanket purchase agreement, such amount shall be the aggregate amount of all orders estimated to be placed thereunder for one year after the effective date of the agreement. If a basic ordering agreement continues or is extended, such estimate shall be made annually for each year after the first and the agreement modified accordingly.

12-303 Contract Clause. See 7-103.16(a).

12-304 Computation of Overtime and Liquidated Damages. When the hours worked during a single workweek by a laborer or mechanic exceed both eight per calendar day and forty per workweek, the number of overtime hours in excess of eight per day and forty per workweek shall be computed separately and the method resulting in the greater number of overtime hours shall be used to calculate the overtime compensation due the employee. When such calculation discloses underpayments, the method used to determine the underpayments shall also be used to determine liquidated damages. When underpayments are found and the number of overtime hours in excess of eight per calendar day equals the number in excess of forty per workweek, the number of calendar days, during which work in excess of eight hours was performed, shall be used to compute liquidated damages. (For waiver or adjustment of liquidated damages, see 18-704.16.)

12-305 Administration and Enforcement. In investigating allegations of violations of the Contract Work Hours and Safety Standards Act on other than construction contracts, the same procedures shall be followed and the same reports made as set forth in 18-704.9, 18-704.10, and 18-704.12.

12-306 Variation—Firefighters and Fireguards. The clause in 7-103.16(b) shall be used in addition to the clause in 7-103.16(a) when firefighters or fireguards are to be employed.

12-307 Labor Standards Enforcement Report. See 12-107.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 4—Labor Standards in Construction Contracts

For coverage regarding Labor Standards in Construction Contracts, see Section XVIII, Part 7.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 5—Safety & Health Regulations for Ship Repairing & Shipbuilding

12-501 Safety and Health Regulations. The Secretary of Labor has promulgated Safety and Health Regulations for Ship Repairing and Shipbuilding pursuant to the authority of Public Law 85-742, 72 Stat. 835 (approved August 23, 1958) amending section 41 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941). These regulations are set forth in Title 29, Code of Federal Regulations, Subtitle B, Part 1501 and Part 1502.

12-502 Applicability. These regulations apply to ship repair and shipbuilding or related work, as defined therein, performed within the Federal maritime jurisdiction on the navigable waters of the United States, including any dry dock or marine railway.

12-503 Contract Clause. The Master Contract for the Repair and Alteration of Vessels (DD ASPR Form 731) includes a clause entitled "U.S. Department of Labor Safety and Health Regulations for Ship Repairing" directing the attention of the contractor to the applicability of these regulations. Similar clauses should be included in shipbuilding and ship conversion contracts.

12-504 Administration and Enforcement. The responsibility for compliance with the U.S. Department of Labor Regulations is placed upon employers, any of whose employees are engaged in any ship repair, shipbuilding, or related employment aboard any vessel upon the navigable waters of the United States, including any dry dock or marine railway. Consequently, prime contractors or subcontractors, or both, may be responsible for compliance with these regulations. Insofar as the Government is concerned, the responsibility for the administration and enforcement of these regulations is with the U.S. Department of Labor. Contractors or employees who inquire concerning applicability or interpretation of the foregoing regulations shall be advised that rulings concerning such matters fall within the jurisdiction of the U.S. Department of Labor and shall be given the address of the appropriate field office of the Bureau of Labor Standards of the U.S. Department of Labor.

Part 6—Walsh-Healey Public Contracts Act

12-601 Statutory Requirement. In accordance with the requirements of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45), hereafter referred to as the Act, all contracts subject to the Act entered into by any Department for manufacture or furnishing of supplies in any amount exceeding $10,000 (i) will be with manufacturers or regular dealers, and (ii) shall incorporate by reference the representations and stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

12-602 Applicability.

12-602.1 *General.* The requirements set forth in 12-601 apply to contracts (including, for this purpose, basic ordering agreements and blanket purchase agreements (see 3-410.2 and 3-605)) for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed $10,000 in amount unless exempt pursuant to 12-602.2. Pursuant to regulations of the Department of Labor, contracts which are originally $10,000 or less, but are subsequently modified to increase the price to an amount in excess of $10,000, are subject to the Act. Contracts in an amount exceeding $10,000, which are subsequently modified to a figure of $10,000 or less, are not subject to the Act with respect to work performed after such modification, if modification is effected by mutual agreement. In the case of a basic ordering agreement or blanket purchase agreement, the amount of the agreement shall be the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement. If a basic ordering agreement continues or is extended, the estimate shall be made annually for each year after the first year and the agreement modified accordingly.

12-602.2 *Exemptions.*

(a) *Statutory Exemptions.* The Act exempts the following transactions from the requirements of the Act:

(i) purchases of generally available commercial items negotiated pursuant to the authority set forth in 3-202;
(ii) purchases of perishables, including dairy, livestock, and nursery products; and
(iii) purchases of agricultural or farm products processed for first sale by the original producers.

(b) *Regulatory Exemptions.*

(1) Department of Labor regulations, 41 CFR 50-201.603, grant full exemptions from the application of the Act to the following types of contracts:

- (i) contracts for public utility services;
- (ii) contracts for materials or supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands;
- (iii) contracts covering purchases against the account of a defaulting contractor where the stipulations of the Act were not included in the defaulted contract; and
- (iv) contracts to sales agents or publisher representatives for the delivery of newspapers, magazines, or periodicals by the publishers thereof.

(2) Department of Labor regulations, 41 CFR 50-201.604, grant partial exemptions from the application of the Act to the following types of contracts:

- (i) contracts with certain coal dealers;
- (ii) certain commodity exchange contracts;
- (iii) contracts with certain export merchants;
- (iv) contracts with small business defense production pools and small business research and development pools; and
- (v) contracts with public utilities for the acquisition of certain uranium products.

PCOs should refer to the sections of the Department of Labor regulations cited in (1) above and in this paragraph for specifics regarding full and partial exemptions.

(3) Section 6 of the Act permits the Secretary of Labor to make exceptions to the requirement that the representations and stipulations of Section 1 of the Act be included in contracts that are subject to the Act. Applications for such exceptions shall be submitted through contracting channels with pertinent data and recommendations to the Departmental Labor Advisor, OASA(RDA) for the Army; Chief of Naval Material for the Navy; Director of Contracting and Acquisition Policy, HQ USAF, for the Air Force; Executive Director, Contracting, for the Defense Logistics Agency; Director of Procurement for the National Security Agency; the Counsel for the Defense Communications Agency; Chief, Office of Acquisition, for the Defense Nuclear Agency; and Staff Director of Logistics for the Defense Mapping Agency.

12-603 Eligibility as Manufacturer or Regular Dealer. The Secretary of Labor has issued interpretations regarding the qualifications of contractors to whom covered contracts may be awarded. These interpretations are set forth in 41 CFR 50-206 and are republished in DAR Appendix R.

12-603.1 *Manufacturer.* As used in 12-601, a "manufacturer" is a person who owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. In order to qualify as a manufacturer, an offeror must be able to meet the requirements set forth in 41 CFR 50-206.51. An assembler must meet the standards set forth in 41 CFR 50-206.52 to qualify as a manufacturer.

12-603.2 *Regular Dealer.*

(a) Except as set forth in (b) below, as used in 12-601, a "regular dealer" is a person who owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business. In order to qualify as a regular dealer, a dealer must meet the standards set forth in 41 CFR 50-206.53.

(b) For certain specific products (lumber and timber products, machine tools, hay, grain, feed or straw, raw cotton, green coffee, petroleum, agricultural liming materials, tea, raw or unmanufactured cotton linters), certain uranium products, and used automatic data processing equipment, there are alternative definitions of regular dealers in which the dealer need not physically maintain a stock. The requirements under the alternative definitions are set forth in 41 CFR 50-201.101 (a)(2) and 50-206.54.

12-603.3 *Agents.* A manufacturer or regular dealer may bid, negotiate, and contract through an authorized agent if the agency is disclosed and the agent acts and contracts in the name of the principal. In this connection, see the clause entitled "Covenant Against Contingent Fees" set forth in 7-103.20 and the procedures prescribed for obtaining information concerning contingent or other fees, as set forth in Section I, Part 5.

12-604 Determination of Eligibility of a Bidder or Offeror.

(a) *Responsibility of the PCO.* The initial responsibility for applying the eligibility requirements set forth in 12-601 and 12-603 rests with the PCO. This initial determination of eligibility shall be in accordance with 1-905.4(d). The Department of Labor does not conduct preaward investigations or render final determinations until the PCO has initially determined whether the eligibility requirements have been met.

(b) *Procedures.*

(1) When the PCO has determined that an apparently successful offeror is ineligible, the PCO shall promptly inform the offeror in writing:

(i) that the eligibility requirements have not been met, and the reasons therefor;

(ii) that the determination may be protested by submitting evidence concerning eligibility to the PCO within 10 working days;

(iii) that if, after review of the evidence submitted by the offeror, the PCO's position has not changed, the protest, together with all pertinent material, will be forwarded in accordance with Department procedures to the Administrator of the Wage and Hour Division, DOL, for a final determination. However, in the case of a small business concern, any determination of ineligibility, whether or not the small business concern protests the determination, shall be forwarded to the Small Business Administration (SBA) Regional Office having authority to process the eligibility findings for the geographical area involved, and the offeror so notified in writing. SBA shall review the findings and shall either reverse the determination and certify the small business concern to be an eligible Government contractor for a specific Government contract or, if SBA concurs in the findings, so notify the PCO and the offeror and forward the matter to the Secretary of Labor for final disposition—in which case the SBA may certify the small business concern only if the Secretary of Labor finds the small business concern to be eligible for award. In any case in which a small business concern or group of such concerns has been certified by SBA to be an eligible Government contractor for a specific Government contract, the PCO shall accept such certification as conclusive.

(2) When another offeror challenges the eligibility of the apparently successful offeror prior to award, the PCO shall promptly notify the apparently successful offeror of the protest and shall notify both the protestor and the apparently successful offeror in writing:

(i) that they may submit evidence concerning the matter to the PCO within 10 working days; and

(ii) that after review of the evidence and after any further necessary investigation, the PCO will reach a decision on all the evidence and notify the protestor of the decision. If either party disagrees with the decision, the PCO, in accordance with Departmental procedures, will forward the protest, together with all pertinent material, to the Administrator of the Wage and Hour Division, DOL, for a final determination. If the decision is favorable to the protestor in a case involving the eligibility of a small business concern, the protest and all pertinent material will be forwarded to SBA, in accordance with 12-604(b)(1)(iii).

(3) Offerors whose bids might become eligible for award should be notified of the protest when an award is to be held up under (1) or (2) above, and requested to extend their acceptance period, if needed.

(4) If the PCO forwards the case to SBA or DOL for review of eligibility under the Act, award will be held in abeyance until the PCO receives a Certificate of Eligibility from SBA or a final determination from DOL, unless—

(i) in the case of a small business concern, the PCO certifies in writing, and the certification is approved by the chief of the contracting office, that award should be made because the items to be acquired are urgently needed, and the PCO includes such certification and supporting documentation in the contract file; or

(ii) in all other cases, the PCO determines that award should be made because (A) the items to be acquired are urgently needed; or (B) delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

If the PCO decides to proceed with the award, prompt written notice of the decision shall be given to DOL and, as appropriate, the protestor, SBA, and others concerned.

(5) If an award is made under (4) above, the PCO shall document the file to explain the need for making an award prior to the receipt of a Certificate of Eligibility from SBA or a determination from DOL, as appropriate, and shall provide such documentation to DOL.

(c) *Protest After Award.* When another offeror challenges the eligibility of the apparently successful offeror after award, the PCO shall notify the protestor and the contractor in writing that they may submit evidence concerning the matter to the PCO within 10 working days. The PCO shall review all available evidence, reach a decision, and forward the matter to DOL. However, in a case involving the eligibility of a small business concern, if the decision is favorable to the protestor, the protest and all pertinent material will be forwarded to SBA in accordance with 12-604(b)(1)(iii).

12-605 Additional Responsibilities of Contracting Officers. When the Act applies and pursuant to regulations or instructions issued by the Secretary of Labor and in accordance with procedures prescribed by each Department—

(a) The PCO shall:

(1) inform prospective contractors of the applicability of minimum wage determinations and

(2) report promptly to the ACO any violation of the representation or stipulation required by the Act that the PCO becomes aware of.

(b) The ACO shall:

(1) furnish Department of Labor WH Publication 1313, "Notice to Employees Working on Government Contracts" (form available through normal publication supply channels) to the contractor and

(2) report to DOL through the PCO any violation of the representations or stipulations required by the Act.

12-606 Contract Clause. See 7-103.17.

12-607 Wage and Hour Division of the United States Department of Labor Regional Offices—Geographical Jurisdictions and Addresses of Regional Directors.

Region I—Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut—JFK Federal Office Building, Boston, MA 02203.

Region II—New York, New Jersey, Puerto Rico, Virgin Islands—1515 Broadway, New York, NY 10013.

Region III—Pennsylvania, Maryland, Delaware, Virginia, West Virginia, District of Columbia—3535 Market Street, Philadelphia, PA 19104.

Region IV—North Carolina, South Carolina, Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida—1371 Peachtree Street, Atlanta, GA 30309.

Region V—Ohio, Indiana, Michigan, Illinois, Wisconsin, Minnesota—230 Dearborn Street, Chicago, IL 60604.

Region VI—Louisiana, Arkansas, Oklahoma, Texas, New Mexico—555 Griffin Square Building, Dallas, TX 75201.

Region VII—Missouri, Iowa, Nebraska, Kansas—911 Walnut Street, Kansas City, MO 64104.

Region VIII—North Dakota, South Dakota, Montana, Wyoming, Colorado, Utah—Federal Office Building, 1961 Stout Street, Denver, CO 80202.

Region IX—California, Nevada, Arizona, Hawaii, Guam—450 Golden Gate Avenue, San Francisco, CA 94102.

Region X—Washington, Oregon, Idaho, Alaska—Federal Office Building, 909 First Avenue, Seattle, WA 98104.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 7—Fair Labor Standards Act of 1938

12-701 Basic Statute. The Fair Labor Standards Act of 1938 (Act of June 30, 1938; 29 U.S.C. 201-219), as amended, provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigations and inspections of Government contractors), and prohibits oppressive child labor. Said Act applies to all employees, unless otherwise exempted, who are engaged in (i) interstate commerce or foreign commerce or (ii) the production of goods for such commerce or (iii) any closely related process or occupation essential to such production.

12-702 Suits Against Government Contractors. Payments made pursuant to the provisions of the Fair Labor Standards Act are usually reimbursable under cost or cost-plus-a-fixed-fee contracts. Consequently, each Department has a direct interest in claims and suits under said Act which are made or brought in connection with such contracts. In this connection, procedures have been established, by agreement between the Department of Justice on the one hand and the Departments on the other hand, governing the defense of such Fair Labor Standards Act suits. These procedures in general contemplate the defense of Fair Labor Standards Act suits by private counsel employed by the contractor, the employment of whom is approved by the Department concerned. These procedures must be followed if contractors are to be reimbursed for the amount of any judgment under said Act, or for any litigation expenses (including the reasonable fees of such private counsel).

12-703 Rulings on Applicability or Interpretation. Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate Regional Director of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Part 8—Equal Employment Opportunity

12-800 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319) as amended, Executive Order No. 11375 of October 13, 1967 (32 F.R. 14303) as amended, and the rules and regulations of the Secretary of Labor (41 CFR, Chapter 60).

12-801 Policy.

(a) Executive Orders 11246 and 11375 require that all Government contracting agencies shall include the Equal Opportunity clause in all non-exempt Government contracts and shall act to insure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin. Therefore, it is the policy of DoD that one of the equal opportunity clauses set forth at 7-103.18 shall be included in all contracts regardless of dollar amount, including Government bills of lading, indefinite delivery type contracts, and other types of agreements (*i.e.*, basic agreements and basic ordering agreements), except as exempted in 12-808(b) through (f).

(b) Contractor disputes related to the Order shall be handled pursuant to the provisions of the appropriate equal opportunity clause, which specifies that the contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor. Those rules, regulations, and relevant orders prescribe particular procedures for handling disputed matters.

(c) No contract or modification involving new acquisition shall be entered into and no subcontract shall be approved with a company which has been found ineligible by the Director, OFCCP, for reasons of noncompliance.

(d) All exemptions from this Part 8 shall be processed in accordance with 12-808, rather than 1-109.

12-802 Applicability of Executive Order. In the event the applicability of the Executive Order and implementing regulations is questioned, the contracting officer shall forward the matter for resolution through procurement channels in accordance with 12-606.

12-803 Definitions. As used in this Part, the following terms have the meanings stated below:

(a) "*Administering Agency*" as used in the clause means any Department, Agency and establishment in the Executive Branch of the Government, including any wholly-owned Government corporation, which administers a program involving Federally-assisted construction contracts.

(b) "*Affirmative Action Compliance Program*" (AACP) means a contractor's program to assure equal opportunity in employment to minorities and women which complies with Department of Labor regulations.

(c) "*Affirmative Action Plan*" means a set of goals and timetables for the employment of minorities and women which has been approved by the Department of Labor.

(d) "*Applicant*" means an applicant for Federal assistance involving a construction contract, or other participant in a program involving a Federally-assisted construction contract as determined by regulations of an administering agency. The term also includes such persons after they become recipients of such Federal assistance.

(e) "*Construction work*" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection and other onsite functions incidental to the actual construction.

(f) "*Contract*" means any Government contract or any Federally assisted construction contract.

(g) "*Contracting Agency*" means any Department, Agency, establishment, or instrumentality in the Executive Branch of the Government, including any wholly-owned Government corporation which enters into contracts.

(h) "*Contractor*" means, unless otherwise indicated, a prime contractor or subcontractor.

(i) "*Director, OFCCP*" means the Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

(j) "*Equal Opportunity Clause*" means the contract provisions as set forth in 7-103.18(a) or (b), as appropriate.

(k) "*Federally assisted construction contract*" means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(l) "*Government contract*" means any agreement or modification thereof between any contracting officer of the Department of Defense and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. The term "*services*," as used in this paragraph includes, but is not limited to the following services: utility, construction, transportation, research, insurance, and fund depository. The term "*Government contract*" does not include (i) agreements in which the parties stand in the relationship of employer and employee, and (ii) Federally assisted construction contracts, and (iii) contracts for the sale of personal property by the Government, and for the sale or purchase of real property by the Government.

(m) "*Order*" means Parts II, III, and IV of Executive Order No. 11246 of September 24, 1965 (30 F.R. 12319), and any Executive Order amending such Order, and any other Executive Order superseding such Order.

(n) "*Prime contractor*" means any person holding a contract and any person who has held a contract subject to the Order.

(o) "*Recruiting and training agency*" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(p) "*Site of construction*" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor or other participating party meets a demand or performs a function relating to the contract or subcontract.

(q) "*Subcontract*" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee): (i) for the furnishing of supplies or services or for use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or (ii) under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

(r) "*Subcontractor*" means any person holding a subcontract and any person who has held a subcontract subject to the Order. The term "first-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(s) "*United States*" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

12-804 Program Responsibilities.

(a) The Secretary of Labor is responsible for the administration of Parts II and III of Executive Order No. 11246, as amended, and for the adoption of such rules and regulations and the issuance of such orders as the Secretary deems necessary and appropriate to achieve the purposes thereof. The Secretary of Labor has established within the Department of Labor an Office of Federal Contract Compliance Programs (OFCCP) under a Director who has been delegated authority and assigned responsibility for carrying out the responsibilities assigned to the Secretary under the Order, except the power to issue rules and regulations of a general nature.

(b) Heads of Departments or Agencies which award or administer contracts are responsible for assuring that the provisions of this Regulation are carried out within their respective components and for cooperating with and assisting the OFCCP in fulfilling its responsibilities. As used in this Part, "*Head of Department or Agency*" means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department, the Director of the National Security Agency, the Director and Deputy Director of the Defense Logistics Agency, the Director of the Defense Communications Agency, the Director of the Defense Civil Preparedness Agency, or the Director of the Defense Mapping Agency.

12-805 Contract Clauses and Solicitation Provisions. Clause and solicitation provisions implementing the EEO program are contained at

(i) 7-103.18(a) - Equal Opportunity clause, used with other than Federally assisted construction;
(ii) 7-103.18(b) - Equal Opportunity (Federally Assisted Construction);
(iii) 7-104.22 - Equal Opportunity Preaward Clearance of Subcontracts;
(iv) 7-603.60 - Affirmative Action Compliance Requirements for Construction;
(v) 7-607.13 - Equal Opportunity clause, used with architect - engineer services;
(vi) 7-2003.14(a) - Preaward On-Site Equal Opportunity Compliance Review;
(vii) 7-2003.14(b)(1)(A) - Certification of Nonsegregated Facilities;
(viii) 7-2003.14(b)(1)(B) - Previous Contracts and Compliance Reports;
(ix) 7-2003.14(b)(2) - Affirmative Action Compliance, used with nonconstruction affirmative action compliance programs;
(x) 7-2003.14(d) - Notice of Requirement for Affirmative Action to Ensure Equal Opportunity; and
(xi) 7-2003.14(c) - Notification of Visa Denial.

12-806 Affirmative Action Compliance Programs (AACPs).

12-806.1 *Nonconstruction.* Except as provided in 12-808, each prime contractor and each subcontractor with 50 or more employees and (i) a contract or subcontract of $50,000 or more, or (ii) Government bills of lading which, in any 12-month period, total or can reasonably be expected to total $50,000 or more is required to develop a written AACP for each of its establishments within 120 days from the commencement of its first such Government contract or subcontract.

12-806.2 *Construction.*

(a) Construction contractors are required to meet (i) the contract provision citing affirmative action requirements covering specified geographical areas or projects and (ii) applicable requirements of 41 CFR Part 60-4.

(b) Departments shall maintain a listing of specific geographical areas that are subject to affirmative action requirements which specify goals for minorities and women in covered construction trades. Information concerning this lising and additions thereto will be provided to the principally affected contracting offices in accordance with departmental procedures. Any contracting office contemplating a construction project in excess of $10,000 within a geographical area not known to be covered by specific affirmative action goals shall request instructions prior to issuance of a solicitation. Such a request shall be forwarded through contracting channels to: Labor Advisor, OASA(RDA), for the Army; the cognizant field office of the Naval Facilities Engineering Command, for the Navy; Director of Contracting and Acquisition Policy, Headquarters USAF, for the Air Force; Executive Director for Procurement, for the Defense Logistics Agency; Director of Procurement, for the National Security Agency; the Counsel, for the Defense Communications Agency; Director, Acquisition Management, for the Defense Nuclear Agency; Staff Director of Logistics, for the Defense Mapping Agency; and the Assistant Director for Administrative Services, for the Defense Civil Preparedness Agency.

(c) Contracting officers shall give written notice to the appropriate Assistant Regional Administrator, OFCCP, within 10 working days of award of the contract subject to these affirmative action requirements. The notification shall include the name, address and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and geographical area in which the contract is to be performed. When requested by the appropriate compliance office, the contracting office shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities (see 18-704.1(b)(2).

12-807 Contracting Officer Responsibilities.

12-807.1 *Contract Provisions.* In all solicitations and contracts, except those exempted by 12-808(b) - (f), the contracting officer shall include the applicable clause(s) and solicitation provisions referenced in 12-805. (Note: By operation of the Executive Order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the Order and this Part to include such a clause whether or not it is physically incorporated in such contracts.)

12-807.2 *Determinations (Excluding Construction).*

(a) *Preaward Clearances for Contracts and Subcontracts of $1 Million or More.* Except as provided in (2)*c.* below, the contracting officer shall request the appropriate OFCCP regional office (see (1)*a.* below) to determine whether a prospective contractor is awardable prior to award of any contract, modification of an existing contract for new effort that would constitute a contract award, issuance of any basic ordering agreement, award of any indefinite delivery contract or letter contract, the estimated amount of which is or is expected to aggregate $1 million or more or to increase the aggregate value of an existing contract to $1 million or more.

(1) *Procedure for Requesting Clearances.*

a. Preaward clearance for each proposed prime contract and for each known proposed first tier subcontract of $1 million or more shall be requested by the contracting officer directly from the OFCCP Regional Office(s), as will be listed from time to time in Defense Acquisition Circulars. Verbal requests shall be confirmed in writing.

b. When contract work is to be performed outside the United States with employees recruited within the United States, the preaward review should be requested from the OFCCP regional office serving the area where the contractor's corporate home or branch office is located within the United States, or the corporate location where personnel recruiting is handled, if different from the foregoing. In cases where the proposed contractor has no corporate office or location within the United States, the preaward action should be based on the location of the recruiting agency, as defined in 12-803(o), in the United States.

c. In making a request for preaward clearance, the contracting officer shall furnish the following information:

(i) name, telephone number, and address of the prospective prime contractor, any corporate affiliate thereof at which work is to be performed, and each known first tier subcontractor with a proposed subcontract estimated at $1 million or more;

(ii) anticipated date of award;

(iii) information as to whether the prime contractor and known first tier subcontractors have previously held any Government contracts or subcontracts or Federally assisted construction contracts (7-2003.14(b)(1)(B));

(iv) place or places of performance of the prime and first tier subcontract estimated at $1 million or more, if known; and

(v) the anticipated dollar amount for the prime and each first tier subcontract, if known.

(2) *Time Limitations for Requesting Preaward Clearances.*

a. As much time as feasible shall be provided prior to award for the conduct of necessary reviews. As soon as the successful contractor can be determined, the contracting officer shall process a preaward clearance request in accordance with procedures established at 12-807.1(a)(1), assuring, where possible, that the preaward clearance request is submitted to the OFCCP regional office at least 30 calendar days prior to the proposed award date.

b. In the event that the Director, OFCCP has not made a final preaward clearance determination within 30 calendar days from submission of the clearance request, the contracting officer shall withhold award of the contract for an additional 15 calendar days or until clearance is received, whichever occurs first. If the additional 15 calendar days expire, and the Director, OFCCP, has not found the contractor to be in compliance or made a final written determination declaring the contractor ineligible for reasons of noncompliance, the award may be made to the contractor in question. The contracting officer shall notify the OFCCP regional office of the award and, through the head of the contracting activity, the departmental labor advisor listed at 12-606.

c. When the procedures specified in *a.* and *b.* above would delay award of an urgent and critical contract beyond the time necessary for the Government to make awards or beyond the time specified in the bid or proposal or extension thereof, the contracting officer shall immediately inform the servicing OFCCP regional office as to the expiration date of the bid or proposal or the required date of award, and request clearance be provided prior to that date. If the OFCCP regional office advises that a clearance review cannot be completed by the required date, the contracting officer shall submit written justification for the award to the head of the contracting activity who, after informing the servicing OFCCP regional office, may then approve the award without the preaward clearance. If an award is made under this authority, the contracting officer shall immediately request a postaward review from the appropriate OFCCP regional office.

d. If, under the provisions of *c.* above, a postaward review determines the contractor to be nonawardable, the Director, OFCCP, may authorize the use of the enforcement procedures at 12-810 against the noncomplying contractor.

(b) *Reserved.*

12-807.3 *Processing Ineligibility Determinations.* Where a determination of ineligibility by reason of EEO deficiencies has been made, the contracting officer shall follow the notification procedures set forth in 12-810(b).

12-807.4 *Contractor Inquiries.* Any contractor inquiring in regard to its compliance status and rights of appeal under 41 CFR 60-2.2(b) shall be referred to the OFCCP regional office.

12.807.5 *Labor Union Inquiries.* Inquiries from organized labor which concern revision of a collective bargaining agreement in order to comply with the Executive Order and with the Equal Opportunity clause shall be referred to the Director, OFCCP. The departmental labor advisor (12-606) shall be advised in writing of all such referrals.

12-807.6 *Other Matters.* Matters requiring the attention of OFCCP national headquarters shall be referred to the departmental labor advisor (see 12-606) in accordance with departmental procedures.

12-807.7 *Equal Opportunity Posters.* The contracting officer shall furnish to the contractors appropriate quantities of the poster entitled "Equal Opportunity Is the Law." These notices shall be obtained in accordance with departmental procedures.

12-808 Exemptions.

(a) *Transactions of $10,000 or Less.* The equal opportunity clause is required to be included in contracts in accordance with 12-801(a). Individual contracts or subcontracts of $10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all contracts and subcontracts awarded to a contractor or subcontractor in any 12-month period exceeds, or can reasonably be expected to exceed $10,000. (Note: Government bills of lading regardless of amount are not exempt). In determining the applicability of this exemption to any Federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. No contracting officer, contractor or subcontractor shall procure supplies or services in a manner so as to avoid applicability of the equal opportunity clause.

(b) *Work Outside the United States.* Contracts and subcontracts are exempt from the requirements of the Equal Opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States. See 12-807.2(a)(l)b for procedures in cases where employees are recruited in the United States.

(c) *Contracts with State or Local Governments.* The requirements of the clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Work on or near Indian Reservations.* It shall not be a violation of the equal opportunity clause for a construction or nonconstruction contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. The use of the word "near" includes all that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors or subcontractors extending such a preference shall not, however, discriminate among Indians on the basis or religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with the Executive Order, rules and regulations of the Secretary of Labor and the equal opportunity clauses and provisions in Section VII.

(e) *Contracts Exempted by the Secretary of Defense in the Interest of National Security.*

(1) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security.

(2) *Request for Exemption.* The contracting officer shall prepare a detailed justification for such determination, which shall be submitted through contracting channels to the labor advisor (see 12-606), for departmental coordination and submission, as appropriate, to the Deputy Under Secretary of Defense for Research and Engineering (DUSDRE), who shall submit the request for exemption to the Secretary of Defense for approval and shall notify the Director, OFCCP, within 30 days of such a determination.

(f) *Specific Contracts and Facilities Exempted by the Director, OFCCP.*

(1) *Specific Contracts.* The Director, OFCCP, may exempt an agency or person from requiring the inclusion of any or all of the Equal Opportunity clause in any specific contract or subcontract when the Director deems that special circumstances in the national interest so require. Groups or categories of contracts or subcontracts of the same type may also be exempted where the Director finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the Order.

(2) *Facilities Not Connected with Contracts.* The Director, OFCCP, may exempt from the requirements of the clause, any of a prime contractor's or subcontractor's facilities which the Director finds to be in all respects separate and distinct from activities of the prime contractor or subcontractor related to the performance of the contract or subcontract, *provided* that the Director also finds that such an exemption will not interfere with or impede the effectuation of the Order.

(3) *Special Circumstances.* The Director, OFCCP, may exempt a contract or subcontract when the Director finds that special circumstances indicate that use of either of the clauses in 7-103.18 in the contract or subcontract would not be in the national interest.

(4) *Request for Exemption.* The contracting officer shall submit a detailed justification for omitting or modifying the clause under (1), (2), or (3) above through contracting channels to the labor advisor (see 12-606), for departmental coordination and submission, as appropriate. The DUSDRE shall submit the request for exemption to the Director, OFCCP.

(5) *Withdrawal of Exemption by the Director, OFCCP.* When any contract or subcontract is of a class exempted under this paragraph 12-808, the Director, OFCCP, may withdraw the exemption for a specific contract, subcontract, or group of contracts or subcontracts when, in his judgment, such action is necessary or appropriate to achieve the purposes of the Executive Order. Such withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal. In contracts entered into by formal advertising or the various forms of restricted formal advertising, such withdrawal shall not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of the bids.

12-809 Complaints.

(a) Complaints received alleging violation of the Equal Opportunity clause shall be referred immediately to the appropriate regional office of the OFCCP. Complainant shall be advised in writing of the referral.

(b) The contractor shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint or the fact that the complaint was received.

12-810 Enforcement.

(a) At written direction of the Director, OFCCP, one or more of the following actions, including administrative sanctions and penalties, may be exercised against contractors found to be in violation of the Executive Order, the regulations of the Secretary of Labor, or the clauses and provisions in Section VII:

(i) publication of the names of such contractors or their unions;

(ii) cancellation, termination, or suspension of the contractor's contracts or portions thereof; and

(iii) debarment from future Government contracts, or extensions or modifications of existing contracts until such contractors have established and carried out personnel and employment policies in compliance with the Executive Order and the regulation of the Secretary of Labor; and

(iv) referral by the Director, OFCCP, of any matter arising under the Executive Order to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

(b) Upon receipt of written notification from the Director, OFCCP, that a specific contractor is ineligible, the deparmental labor advisor (see 12-606) shall be immediately informed by the most expeditious means and provided a copy of the notification. The departmental labor advisor shall inform HCAs of the contractor's ineligible status.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 9—Nondiscrimination Because of Age

12-901 Policy Regarding Nondiscrimination Because of Age. It is the policy of the Executive Branch of the Government (i) that contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and (ii) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement. This policy is stated in Executive Order No. 11141 dated 12 February 1964. Any complaint regarding a concern's compliance with the foregoing policy should be brought to the attention of the concern by a communication (in writing, if appropriate) which states the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern take any appropriate steps which may be necessary to comply with the policy.

Part 10—Service Contract Act of 1965, As Amended

12-1000 Scope of Part. This part sets forth policies and procedures for implementing the provisions of the McNamara-O'Hara Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and the provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.), as they pertain to service contracts, and the regulations prescribed in 29 CFR, Parts 4 and 1910, and instructions issued by the Secretary of Labor.

12-1001 Statutory Requirements. The Service Contract Act, referred to in this part as the "Act," includes the following general requirements with respect to service contracts entered into by Federal agencies.

(i) Regardless of contract amount, no contractor or subcontractor holding a Federal service contract shall pay any of its employees engaged in such work less than the minimum wage specified in the Fair Labor Standards Act of 1938, as amended;

(ii) Successor contractors performing on contracts in excess of $2,500 must pay wages and fringe benefits at least equal to those agreed upon for substantially the same services in any bona fide collective bargaining agreement entered into by the predecessor contractor (unless such wages and fringe benefits are determined to be substantially at variance with those which prevail for services of a similar character in the locality);

(iii) Service contractors performing on contracts in excess of $2,500, to which no predecessor contractor's collective bargaining agreement applies, shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act; and

(iv) See 12-1002.4 for statutory exemptions and 12-1002.5 for regulatory exemptions.

12-1002. Applicability.

12-1002.1 *General.* Subject to statutory exemptions or administrative exemptions by the Secretary of Labor under section 4(b) of the Act (41 U.S.C. 353), the Act applies to all Federal contracts, the principal purpose of which is to furnish services in the United States through the use of service employees. (Note: In contracts having separate and severable requirements for supplies and services, the principal purpose test is applied to the service requirement, thereby possibly bringing it within the Act's coverage.)

12-1002.2 *Geographical Coverage of the Act.* The Act applies to service contracts performed within the United States (see 12-1002.3(ii)). The Act does not apply to contracts performed outside the United States.

12-1002.3 *Definitions.* For the purpose of this part, unless otherwise indicated, terms used here are defined as follows:

(i) "Service employee" means any person employed in connection with a contract entered into by the United States and not exempted under section 7 of the Act (41 U.S.C. 356), whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR, Part 541); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(ii) "United States" shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands, as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.), American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any U.S. base or possession within a foreign country.

(iii) "Administrator" means the Administrator of the Wage and Hour Division, United States Department of Labor, or the Administrator's authorized representative.

(iv) "Contract" includes any contract subject wholly or in part to provisions of the Act and any subcontract at any tier thereunder.

(v) "Contractor" includes a subcontractor whose subcontract is subject to provisions of the Act.

(vi) "Wage Determination" includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of section 2(a) and 4(c) of the Act (41 U.S.C. 351 and 353) for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of $2,500 that is subject to the provisions of the Act.

12-1002.4 *Statutory Exemptions.* Statutory exemptions are set forth in paragraph (p) of the clause at 7-1903.41(a).

12-1002.5 *Administrative Limitations, Variations, Tolerances, and Exemptions.* The Secretary of Labor, only in special circumstances, may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act as the Secretary may find necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business (41 U.S.C. 353(b)). Requests for variations, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels to the departmental labor advisor (12-1002.6).

12-1002.6 *Questions Concerning Applicability of the Act.* In the event the contracting officer questions the applicability of the Act to an acquisition, the matter shall be forwarded for resolution, prior to issuance of the solicitation, as follows:

For the Army: Assistant Secretary of the Army (RDA)
Attn: Labor Advisor
For the Navy: Chief of Naval Material
Attn: Labor Relations Advisor
For the Air Force: Chief, Air Force Labor Relations
HQ USAF/RDC
For DCA: Defense Communications Agency Headquarters
Attn: Counsel
For DMA: Staff Director of Logistics
For DNA: Deputy Director of Operations and Administration
For DLA: Deputy Director (Contract Administrative Services)
Attn: DLA-HP

12-1003 Department of Labor Regulations. The Department of Labor has issued 29 CFR, Parts 4 and 1910, providing for the administration and enforcement of the Act. The regulations include coverage of the following matters relating to the requirements of the Act:

(i) Service Contract Labor Provisions and Procedures (see 29 CFR, Subpart A, Part 4);
(ii) Equivalents of Determined Fringe Benefits (see 29 CFR, Subpart B, Part 4);
(iii) Application of the Act of 1965 (Rulings and Interpretations) (see 29 CFR, Subpart C, Part 4);
(iv) Safe and Sanitary Working Conditions (see 29 CFR, Part 1910); and
(v) Rules of Practice for Administrative Proceedings Enforcing Service Contract Labor Standards (see 29 CFR, Part 6).

12-1004 Contract Clauses and Solicitation Provisions. Clauses, solicitation provisions, and guidance as to their use are contained at:

(i) 7-1903.41(a) - Service Contracts in Excess of $2,500;

(ii) 7-1903.41(b) - Service Contracts Not in Excess of $2,500;

(iii) 7-1903.41(c) - Basic Ordering Agreements and Blanket Purchase Agreements;

(iv) 7-1903.41(d) - Price Adjustment Clause;

(v) 7-1903.41(e) - Potential Application of the Act to Overhaul and Modification Work;

(vi) 7-2003.84 - Statement of Rates for Federal Hires;

(vii) 7-2003.85 - SCA Minimum Wages and Fringe Benefits Applicable to Successor Contractor Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA).

12-1005 Administration and Enforcement.

12-1005.1 *Responsibilities of the Department of Labor.* The Secretary of Labor is authorized and directed to administer and enforce the provisions of the Act, to make rules and regulations, issue orders, make decisions, and take other appropriate action under the Act.

12-1005.2 *Contracting Officer Responsibilities—Preparation of Solicitations and Contracts.*

(a) As to solicitations and contracts of $2,500 or less, to which the Act applies, the contracting officer shall include the clause set forth in 7-1903.41(b).

(b) As to solicitations and contracts that are or may be in excess of $2,500, to which the Act applies, the contracting officer shall insert the applicable clause(s) at 7-1903.41 and solicitation provision(s) at 7-2003.84 and 7-2003.85, and shall take the following appropriate actions:

(1) *Issuance of Notice of Intention to Make a Service Contract—Standard Forms 98 and 98a.*

a. No less than 30 days prior to issuance of any solicitation or commencement of negotiations for any new contract, contract extension, bilateral modification adding significant new work, or exercise of an option exceeding $2,500, which may be subject to the Act, the contracting office shall file with the Wage and Hour Division, Employment Standards Administration, Department of Labor, its notice of intention to make a service contract. To avoid delays because of late issuance of wage determinations by the Department of Labor in response to the notice, the contracting office shall make every effort to file its notice as early as possible. This notice shall be submitted on SF 98/98a (see Appendix F-100.98) in accordance with the forms' instructions and shall be supplemented by the information required under *b.* and *c.* below. Care should be taken to insure that all required information is provided to avert return without action by the Department of Labor.

b. The contracting office shall file SF 98a with SF 98. SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(i) classes of service employees;
(ii) the number of service employees in each class; and
(iii) the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of 5 U.S.C. 5341 or 5332 (see (3) below).

c. If the services to be furnished under the proposed contract will be substantially the same as services being furnished for the same location by an incumbent contractor whose contract the proposed contract will succeed, and if the incumbent contractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements, the contracting officer shall obtain from the contractor (see paragraph (n) of 7-1903.41(a)) a copy of each such collective bargaining agreement, together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement, and submit them with the SF 98/98a, retaining a copy for the contract file. If such services are being furnished for more than one location and the collectively bargained wage rates and fringe benefits are different for different locations or do not apply to all locations, the contracting officer shall identify the locations to which the agreements have application. See (2) below for notice to interested parties, which is required at least 30 days prior to issuance of the solicitation. See also (4)*b.* below, concerning collective bargaining agreements that are considered not to be entered into as a result of arms-length negotiations or that are at substantial variance with the wages and fringe benefits prevailing in the locality.

d. If exceptional circumstances prevent the filing of the notice of intention and the supplemental information required by *b.* above, the notice shall be submitted to the Wage and Hour Division as soon as practicable, with a detailed explanation justifying the need for expedititious action on the SF 98.

e. Requests to expedite issuance of wage determinations or to check the status of a particular request should be made in accordance with departmental procedures through the offices listed in 12-1002.6. Direct contact with Department of Labor officials for this purpose is not authorized.

(2) *Notice to Interested Parties.* If, pursuant to paragraph (n) of the clause set forth at 7-1903.41(a) or through other means, the contracting officer is aware or has reason to believe that the incumbent contractor or a subcontractor is negotiating or has consummated a collective bargaining agreement with a bargaining agent representing service employees performing on the contract, both the contractor and bargaining agent(s) shall be notified of the pending acquisition at least 30 days prior to (i) issuance of the solicitation, or (ii) the commencement of performance of contract modification extending the initial period of performance or affecting the scope of effort or of an option. Such notification shall be made by registered letter, return receipt requested, and shall set forth all pertinent dates.

(3) *Statement of Equivalent Rates for Federal Hires.*

a. The provision at 7-2003.84 shall be inserted in each solicitation for the acquisition of services to which the clause at 7-1903.41(a) applies. In accordance with this provision, the solicitation shall contain a statement of rates for equivalent Federal hire, setting forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule—white collar) and/or 5 U.S.C. 5341 (Wage Board—blue collar) were applicable.

b. Procedures for computation of these rates are as follows:

1. Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees. Determinations of applicable Wage Board rates are as follows:

i. Where the place of performance is known, the rates applicable to that location shall be used; or

ii. Where the place of performance is not known, the rates applicable to the contracting activity's location shall be used.

2. Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

3. Local civilian personnel offices can assist in determining and providing grade and salary data.

4. The Department of Labor develops standardized fringe benefits. The approved standard and any subsequent modification thereto shall be published in the Defense Acquisition Circular.

(4) *Applicability of Wage Determinations Prior to Award.*

a. Solicitations and contracts for more than $2,500 shall contain an attachment (wage determination or appropriate revisions thereto) issued by the Administrator in response to the notice required under (1) above, setting forth the minimum wages and fringe benefits for service employees to be employed thereunder. However, wage determinations and revisions thereto shall not apply—

(i) where no collective bargaining agreement exists and wage determinations or revisions are received by the Federal agency less than 10 days before the opening of bids or date established for the initial receipt of proposals, unless the contracting officer finds that there is a reasonable time to notify bidders or offerors thereof; or

(ii) where a collective bargaining agreement does exist and (A) the contracting agency has received notice of the existence thereof less than 10 days before bid opening or commencement of performance of a negotiated contract, option, or contract extension, and (B) the contracting officer determines that there is not reasonable time to incorporate a new wage determination in the solicitation, and (C) the notices required by (1) and (2) above have been given.

b. Review of Collective Bargaining Agreements and Wage Determinations.

1. If a contracting officer believes that an incumbent contractor's collective bargaining agreement under section 4(c) of the Act was not entered into as a result of arms-length negotiations, procedures in accordance with *4.* below shall be followed.

2. Immediately upon receipt of a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall examine the wage determination to ascertain whether it is correct and whether it conforms with the wages and fringe benefits prevailing for services of a character similar in the locality. If the wage determination is at substantial variance with the prevailing rates, the contracting officer shall proceed in accordance with *3.* below.

3. A full statement of the facts shall be transmitted immediately to the departmental labor advisor (see 12-1002.6) through contracting channels for appropriate action.

4. If wages and fringe benefits provided for in a collective bargaining agreement are substantially at variance with those prevailing for services of a character similar in the locality, the contracting officer shall proceed as follows:

i. Review immediately the agreement to ascertain if a hearing (12-1006) is warranted.

ii. Submit a request for hearing, when warranted, to the departmental labor advisor (12-1002.6) through contracting channels. Sufficient payroll data shall accompany this request to support a *prima facie* showing that the bargained-for rates, in fact, are substantially at variance with those prevailing for services of a character similar in the locality. Except under extraordinary circumstances, as determined by the Administrator, a request for hearing shall not be considered by the Secretary unless received by the Department of Labor more than 10 days before the award of an advertised contract or prior to the commencement of a negotiated contract or contract extension, through option or otherwise.

(5) *Late Receipt of Wage Determinations.*

a. If the SCA wage determination requested in accordance with (1) above is not received in time for inclusion in the solicitation, and absent an incumbent contractor union agreement, the contracting officer should proceed using the latest wage determination included in the existing contract, if any. If a new wage determination is subsequently received 10 or more days prior to the opening of bids or the date established for the initial receipt of proposals, the solicitation must be amended accordingly. However, if a new wage determination is received less than 10 days before the opening of bids or the date established for the initial receipt of proposals, it shall be included in the solicitation only when there is a reasonable time to notify offerors thereof, pursuant to (4)*a.*(i) above.

b. In those cases involving an incumbent contractor operating under a collective bargaining agreement, the wage determination in the incumbent's contract shall not be included in any solicitation that must be released without a new SCA wage determination. Instead, using the solicitation provisions at 7-2003.85, offerors shall be informed that—

(i) the economic terms of such agreement(s) will apply to the contract and should be considered in developing an offer; however,

(ii) pursuant to Department of Labor regulations at 29 CFR 4.1c, and subject to the conditions set forth in (2) and (4)*a.ii.* above, the economic terms of any agreement entered into subsequent to this solicitation might apply to the contract.

c. The contracting officer shall notify in writing the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, of each case when compelled to proceed without a new wage determination due to a delayed response from the Department of Labor. An information copy of each such notice shall be forwarded to the appropriate departmental labor advisor (see 12-1002.6).

12-1005.3 *Applicability of Wage Determinations—Subsequent to Award.* If a required wage determination is not included in the solicitation or contract due to failure to comply with 12-1005.2(b)(1) or (2), and if the contracting officer receives a wage determination from the Department of Labor within 30 days of the late filing of the SF 98/98a or the discovery by the Department of Labor of the failure to include a wage determination required by this part—

(i) the contracting officer shall attempt to negotiate a bilateral notification to—

  (A) incorporate the appropriate clauses, if not previously included;

  (B) incorporate the required wage determination, which shall be effective as of the date of issuance unless otherwise specified; and

  (C) equitably adjust the contract price to compensate for any increased cost of performance under the contract by the wage determination; or

(ii) the contracting officer, if unable to negotiate a bilateral modification incorporating the wage determination, shall document the contract file to show the efforts made and provide a copy of this documentation through appropriate channels to the departmental labor advisor (see 12-1002.6).

12-1005.4 *Additional Classes of Service Employees (Conformable Rates).* Where additional classes of service employees are required, which were not set forth in the wage determination, the procedure described in paragraph (a) of the contract clause (7-1903.41(a) shall be followed after award.

12-1005.5 *Notice of Award.*

(a) *Notice of Award of Contract—Standard Form 99.* Two copies of SF 99 shall be prepared for (i) contracts of $2,500 or more but less than $10,000, containing the clause in 7-1903.41(a); (ii) the initial order (if less than $10,000) under an indefinite delivery-type contract or basic ordering agreement containing the clause in 7-1903.41(a); and (iii) the initial call under a blanket purchase agreement containing the clause in 7-1903.41(a). This form shall be forwarded to the Department of Labor, ATTN: Administrator, Wage and Hour Division, Washington, D.C. 20210. The form shall be completed as follows:

(i) Item 1 through 7 and 12 and 13: self-explanatory;
(ii) Item 8: enter the notation "Service Contract Act";
(iii) Item 9: leave blank;
(iv) Item 10: (A) enter the notation "Major Category" and indicate beside this entry the general service area into which the contract falls, and (B) enter the heading "Detailed Description" and, following this entry, describe in detail the services to be performed; and
(v) Item 11: enter the dollar amount of the contract or the estimated dollar value with the notation "estimated" (if the exact amount is not known). If neither the exact nor the estimated dollar value is known, enter "indefinite" or "not to exceed $_________."

(b) *Individual Procurement Action Report (DD Form 350).* Awards of service contracts of $10,000 or more and orders of $10,000 or more under indefinite delivery-type contracts and basic ordering agreements are reported to the Department of Labor by the Office of the Secretary of Defense from information contained in this form (see 21-114). Therefore, the contracting officer shall not report such awards directly to the Department of Labor.

12-1005.6 *Inquiries Concerning the Act.* Contractors or contractor employees who inquire concerning the administration and enforcement of the Act shall be advised that such matters fall within the jurisdiction of the Department of Labor and shall be given the address of the appropriate

Assistant Regional Administrator of the Wage and Hour Division of the Department of Labor (see 12-607).

12-1005.7 *Contract Modifications.*

(a) *Bilateral Contract Modifications.* Generally, a bilateral contract modification affecting the scope of the work is regarded as a new contract for purposes of the Act. (Bilateral contract modifications not related to the contract's labor requirements or containing insignificant changes to the contract's labor requirements shall not be deemed to create a new contract for purposes of the Act.) Prior to entering into such modification, the contracting officer shall forward SF 98/98a to the Administrator in accordance with the procedure set forth in 12-1005.2(b)(1), except that—

(i) in the "Estimated Solicitation Date" block, enter the date the wage determination is needed; and

(ii) in block 6, enter "Modification of Existing Contract for (describe type of service) Services."

(b) *Extension of Contract Through Exercise of Option or Otherwise.* A new contract shall be deemed entered into for purposes of the Act when the period of performance of an existing contract is extended pursuant to an option clause or otherwise. Prior to extending the period of performance of the contract, the contracting officer shall forward SF 98/98a as provided in 12-1005.2(b)(1) and in (a) above.

12-1005.8 *Multiyear Contracts.* After the initial submission of the SF 98/98a, the contracting officer shall submit an SF 98/98a on an annual basis at least 30 days prior to the anniversary date on all multiyear contracts subject to the Act (see paragraph (c) of 7-1903.41(a)).

12-1005.9 *Withholding of Contract Payments.*

(a) As provided by the Act, any violation of the stipulations required by the clauses (7-1903.41) renders the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of the contract. Upon the written request of the Department of Labor, at a level no lower than an Assistant Regional Administrator, so much of the accrued payment due on the contract under which the violations occurred shall be withheld as is necessary to pay such employees under that contract or under any other contract between the Government prime contractor and the Federal Government, provided such other contract is not assigned pursuant to 31 U.S.C. 203 or 41 U.S.C. 15. Generally, such sums withheld shall be forwarded immediately to the Department of Labor for payment to employees unless otherwise directed by the Department of Labor.

12-1005.10 *Termination.* See paragraph (i) of 7-1903.41(a).

12-1005.11 *Cooperation With the Department of Labor.* The contracting officer shall cooperate with representatives of the Department of Labor in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department of Labor. When requested, agencies shall furnish to the Administrator any available information with respect to contractors, subcontractors, their contracts, and the nature of the contract services. Violations apparent to the contracting agency and complaints received shall be promptly referred in writing to the appropriate regional office of the Department of Labor. In no event shall complaints by employees be disclosed to the employer.

12-1006 Hearings. A successor contractor's obligation (see 12-1001(ii)) cannot be avoided unless it is found after a hearing that such bargained for wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality. Such hearings may be requested by any interested party, including the contractor, a union, or the contracting agency.

12-1007 Procedures for Evaluating Professional Employee Compensation for Service Contracts.

12-1007.1 *Purpose.* The Service Contract Act of 1965, as amended, was enacted to ensure that blue collar and some white collar workers are fairly compensated by contractors providing contract services to the Government. It does not apply, however, to professional employees. This subpart provides policies and procedures to be used when contracting for services which include a meaningful number of professional employees not covered under the Service Contract Act.

12-1007.2 *Policy.* It is the policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government be fairly and properly compensated.

12-1007.3 *Applicability.* The provisions in 7-2003.78 and 7-2003.79 shall apply when all of the following conditions are present:

(i) the principal purpose of the proposed contract is to furnish services in the United States;

(ii) the proposed contract will be negotiated;

(iii) there are a meaningful number of professional employees who will be employed by the contractor to perform the service; and

(iv) the proposed contract will be in excess of $250,000.

12-1007.4 *Definition of Professional Employee.* The term "professional" is not restricted to the traditional professions of law, medicine, and theology. It includes those professions that have a recognized status and that are based on the acquirement of professional knowledge through prolonged study. Title 29, Part 541, Code of Federal Regulations, defines the term "professional employee" and provides a listing of occupations generally considered to be held by professionals.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

Part 11—Meeting Manpower Requirements

12-1100 Policy. The Department of Defense shall cooperate with and encourage contractors to utilize to the fullest extent practicable the United States Employment Service (USES) and its affiliated local State Employment Service offices in meeting contractors' manpower (labor supply) requirements to staff new or expanding plant facilities, including the requirement of workers in all occupations and skills both from local labor market areas and through the Federal-State manpower clearance system. Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors who need and desire it, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

CONTRACTOR INDUSTRIAL LABOR RELATIONS

PART 12—Reserved.

Part 13—Employment of the Handicapped

12-1300 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, Public Laws 93-112 and 93-516, (hereinafter referred to as the "Act"), Executive Order 11758 of 15 January 1974, and the regulations of the Secretary of Labor (41 CFR Part 60-741 effective 17 May 1976, formerly 20 CFR Part 741).

12-1301 Policy. The Act applies to all Government contracts and subcontracts for personal property and nonpersonal services for $2,500 or more. Under the Act, Government contractors and subcontractors are required to take affirmative action to employ, and advance in employment, qualified handicapped individuals without discrimination as to their physical or mental handicap.

12-1302 Applicability.

(a) *General.* Except as otherwise provided herein, every contract, as defined in 1-201.4, for $2,500 or more or expected to exceed $2,500, shall include the clause in 7-103.28. No contracting officer, contractor, or subcontractor shall procure supplies or services in less than usual quantities to avoid the applicability of this clause.

(b) *Work Outside the United States.* The requirements of the clause in 7-103.28 are waived with regard to work performed outside the United States by employees who were not recruited within the United States. For the purposes of this paragraph, the term "*United States*" includes the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands. |

(c) *Contracts with State or Local Governments.* The requirements of the clause in 7-103.28 in any contract or subcontract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Waivers.*

(1) The Secretary of Defense, with the concurrence of the Department of Labor, may waive any contract or subcontract from any or all of the provisions of the clause in 7-103.28 when he deems that special circumstances in the national interest so require. The Secretary of Defense, with the concurrence of the Department of Labor, may also waive groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where group waivers will

substantially contribute to convenience in administration of section 503 of the Act.

(2) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirements is necessary to the national security.

(3) The contracting officer shall submit requests for waiver under (1) and (2) above to the ASD (MRA&L) in accordance with Departmental procedures.

(4) In accordance with the regulations of the Department of Labor (41 CFR 60-741.3(c)), an exemption granted for a particular class of contracts or subcontracts may be withdrawn for any contract or subcontract within that class whenever such withdrawal is considered by the Department of Labor to be necessary or appropriate in order to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawals shall not apply unless the withdrawal is made more than ten calendar days before the date set for the opening of the bid.

12-1303 Reserved.

12-1304 Department of Labor Notices. In accordance with the clause in 7-103.28, the ACO shall furnish to the contractor official, Department of Labor notices which state the contractor's obligations and the handicapped individual's rights under the Employment of the Handicapped program. Such notices may be obtained from the appropriate addressee listed in 12-607.

12-1305 Collective Bargaining Agreements. Whenever performance in accordance with the clause in 7-103.28 may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such agreements shall be advised that the Department of Labor will give them appropriate opportunity to present their views. In no event will the contracting officer or any of his representatives, engage in any discussions with representatives either of the contractor or of labor concerning any aspect of the collective bargaining agreement to which they are parties.

12-1306 Complaint Procedures. Whenever an activity receives a complaint relating to the administration of the Act, the activity shall forward the complaint, in accordance with Departmental procedures, to the ASD (MRA&L). No resolution or investigation of such complaint shall be undertaken by the activity in the absence of specific instructions from the ASD (MRA&L).

12-1307 Sanctions. Whenever the contracting officer is notified that the Department of Labor has imposed sanctions on a contractor for violations of the clause in 7-103.28, which sanctions include withholding of progress payments, termination or suspension of the contract, or debarment of the contractor, he shall take appropriate action, as soon as possible thereafter to implement the sanctions.

Part 14—Affirmative Action for Disabled and Vietnam Veterans

12-1400 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, Public Law 92-540 and 93-508 (38 U.S.C. 2012), hereinafter referred to as the "Act"; Executive Order 11701 of January 24, 1973 (38 FR 2675); and the regulations of the Secretary of Labor (41 CFR Part 60-250, effective June 18, 1976, formerly 41 CFR Part 50-250).

12-1401 Policy. The Act applies to all Government contracts and subcontracts for personal property and nonpersonal services for $10,000 or more. Under the Act, Government contractors and subcontractors are required to list all suitable employment openings and to take affirmative action to employ disabled veterans and veterans of the Vietnam era without discrimination based on their disability.

12-1402 Applicability.

(a) *General.* Except as otherwise provided herein, every contract, as defined in 1-201.4, for $10,000 or more or expected to exceed $10,000, shall include the clause in 7-103.27. No contracting officer, contractor, or subcontractor shall procure supplies or services in less than usual quantities to avoid the applicability of this clause.

(b) *Work Outside the United States.* The requirements of the clause in 7-103.27 are waived with regard to work performed outside the United States by employees who were not recruited within the United States. For the purposes of this paragraph, the term "United States" includes the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(c) *Contracts with State or Local Governments.* The requirements of the clause in 7-103.27 in any contract or subcontract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract or subcontract.

(d) *Waivers.*

(1) The Secretary of Defense, with the concurrence of the Department of Labor, may waive any contract or subcontract from any or all of the provisions of the clause in 7-103.27 when he deems that special circumstances in the national interest so require. The Secretary of Defense, with the concurrence of the Department of Labor, may also waive groups or categories of contracts or subcontracts of the same type where it is (i) in the national interest, (ii) found impracticable to act upon each request individually, and (iii) where group waivers will substantially contribute to convenience in administration of the Act.

(2) Any requirement set forth in this Part shall not apply to any contract or subcontract whenever the Secretary of Defense determines that such contract or subcontract is essential to the national security and that its award without complying with such requirements is necessary to the national security.

(3) The contracting officer shall submit requests for waiver under (1) and (2) above to the OUSD(RE)(CPA) in accordance with Departmental procedures.

(4) In accordance with the regulations of the Department of Labor (41 CFR 60-250.3(c)) a waiver granted for a particular class of contracts or subcontracts may be withdrawn for any contract or subcontract within that class whenever such withdrawal is considered by the Department of Labor to be necessary or appropriate in order to achieve the purposes of the Act. The withdrawal shall not apply to contracts or subcontracts awarded prior to the withdrawal, except that in procurements entered into by formal advertising, or the various forms of restricted formal advertising, such withdrawal is made more than ten calendar days before the date set for the opening of the bids.

12-1403 Reserved.

12-1404 Department of Labor Notices. In accordance with the clause in 7-103.27, the ACO shall furnish to the contractor appropriate notices for posting when these notices are prescribed by the Director, Office of Federal Contract Compliance Programs.

12-1405 Complaint Procedures. Whenever performance in accordance with the clause in 7-103.27 may necessitate a revision of a collective bargaining agreement, the labor union or unions which are parties to such agreements shall be advised that the Department of Labor will give them appropriate opportunity to present their views. In no event will the contracting officer or any of his representatives, engage in any discussions with representatives either of the contractor or of labor concerning any aspect of the collective bargaining agreement to which they are parties.

12-1406 Complaint Procedures. Whenever an activity receives a complaint relating to the administration of the Act, the activity shall forward the complaint, in accordance with Departmental procedures, to the ASD (MRA&L) (PA). No resolution or investigation of such complaint shall be undertaken by the activity in the absence of specific instructions from the OUSD(RE)(CPA).

12-1407 Sanctions. Whenever the contracting officer is notified that the Department of Labor has imposed sanctions on a contractor for violations of the clause in 7-103.27, which sanctions include withholding of progress payments, termination or suspension of the contract, or debarment of the contractor, he shall take appropriate action, as soon as possible thereafter to implement the sanctions.

SECTION XIII GOVERNMENT PROPERTY

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SECTION XIII

GOVERNMENT PROPERTY

13–000 Scope of Section. This Section sets forth the policies of the Department of Defense with respect to providing property for use by contractors in connection with procurement by the Departments and references applicable contract clauses for contracts other than facilities contracts. (For facilities contract clauses, see Section VII, Part 7.) This Section does not apply to the lease of property to contractors under 10 U.S.C. 2667 or other leasing authorities, except as to non-Government use of industrial plant equipment under 13–405 or to property to which the Government has acquired a lien for title solely as a result of partial, advance or progress payments.

GOVERNMENT PROPERTY

Part 1—General

13-101 Definitions. As used in this Section, the following terms have the meaning stated below. Additional definitions applicable to property administration are set forth in Appendices B and C.

13-101.1 *Property* includes all property, both real and personal. For the purpose of this Section, it consists of five separate categories—material, special tooling, special test equipment, military property, and facilities.

13-101.2 *Government property* means all property owned by or leased to the Government or acquired by the Government under the terms of a contract. Government property includes both Government-furnished property and contractor-acquired property as defined below:

(i) *Government-furnished property* is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise made available to the contractor; and

(ii) *Contractor-acquired property* is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

13-101.3 *Provide*, as used in the context of such phrases as "Government property provided to the contractor" and "Government-provided property", means either to furnish, as in "Government-furnished property", or to acquire, as in "contractor-acquired property."

13-101.4 *Material* means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of a contract.

13-101.5 *Special tooling* means all jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, and replacements thereof, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the development or production or particular supplies or parts thereof, or the performance of particular services. The term includes all components of such items, but does not include:

(i) material

(ii) special test equipment; or

(iii) buildings, and nonseverable structures (except foundations and similar improvements necessary for the installation of special tooling), general or special machine tools, or similar capital items.

13-101.6 *Special test equipment* means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in the performance of the contract. Such testing units comprise electrical, electronic, hydraulic, pneumatic, mechanical, or other items or assemblies of equipment, that are mechanically, electrically, or electronically interconnected so as to become a new functional entity, causing the individual item or items to become interdependent and essential in the performance of special purpose testing in the development or production of particular supplies or services. The term "*special test equipment*" does not include:

(i) material;
(ii) special tooling;
(iii) buildings and nonseverable structures (except foundations and similar improvements necessary for the installation of special test equipment); and
(iv) plant equipment items used for general plant testing purposes.

13–101.7 *Military property* means Government-owned personal property designed for military operations. It includes end items and integral components of military weapons systems, along with the related peculiar support equipment which is not readily available as a commercial item. It does not include Government material, special test equipment, special tooling or facilities, as defined in Appendices B and C.

13–101.8 *Facilities* means industrial property (other than material, special tooling, military property, and special test equipment) for production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment (see B–102.10).

13–101.9 *Government production and research property* means:
(i) Government-owned facilities,
(ii) Government-owned special test equipment, and
(iii) special tooling to which the Government has title or the right to acquire title.

13–101.10 *Nonseverable*, when related to Government production and research property, means that such property cannot be removed after erection or installation without substantial loss of value or damage thereto, or to the premises where installed.

13–101.11 *Facilities contract* means a contract under which Government facilities, and occasionally special tooling and special test equipment, are provided to a contractor or a subcontractor by the Government for use in connection with the performance of a separate contract or contracts for supplies or services.

13–101.12 *Facilities project* means an undertaking by the Government to provide facilities to a contractor for the performance of a Government contract or subcontract or to modernize or replace facilities for the same purpose.

13–101.13 *Nonprofit organization* means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

13–102 Responsibility and Liability for Government Property.

13–102.1 *Prime Contractors.* It is the policy of the Department of Defense not to hold a contractor responsible for loss of or damage to Government property when such Government property is provided under:
(i) a facilities contract;
(ii) a negotiated, fixed-price type procurement contract for which the price is not based on (A) adequate price competition, (B) established catalog or market prices of commercial items sold in substantial quantities to the general public (see 3–807.7 (b)), or (C) prices set by law or regulation; or
(iii) a cost-type procurement contract.

13-102.2 *Subcontractors.*

(a) If Government property is provided to a subcontractor directly by the Government, 13-102.1 shall apply.

(b) If Government property is provided to a subcontractor by a prime contractor, the latter shall be required to hold the subcontractor liable for any loss of or damage to such property; *provided*, however that if the prime contract falls under either 13-102.1(ii) or (iii), the prime contractor may, with the prior approval of the contracting officer:

- (i) include in any cost-reimbursement type subcontract thereunder provisions similar to those contained in paragraph (g) of the clause in 7-203.21; and
- (ii) include in any fixed-price subcontract meeting the criteria set forth in 13-102.1(ii) a provision similar to that contained in 7-104.24(c).

Contracting officers shall, prior to approving the inclusion of the provisions referred to above in any subcontract, balance the need for the protection and care of Government property against the cost thereof. A prime contractor who provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that he may have under the terms of his contract.

13-103 Furnishing Military Property.

(a) Military property may be furnished to contractors when necessary for use as a standard or model, for testing the contractors' end item where suitable commercial equipment is not available, to establish equipment compatibility, or for similar reasons.

(b) Military property may be furnished to contractors under a facilities contract, a supply or service contract, or a special bailment contract. Each contract under which such property is furnished shall provide that:

- (i) each item of the property be identified by its Federal Item Identification Number and Government nomenclature;
- (ii) the property be accounted for under that contract; and
- (iii) upon its completion or termination, the contractor shall request and comply with disposition instructions from the contracting officer.

13-104 Profits and Fees. No fee is to be provided or allowed a facilities contractor under a facilities contract. Where Government production and research property is provided under facilities contracts, profit or fee (plus or minus) shall be considered in the negotiation of the related separate contract or contracts for supplies or services, consistent with the profit guidelines established in 3-808.

13-105 Use for or by Contractors of Test Facilities Owned and Operated by the Government. The on-site use for or by contractors of existing Government-owned test facilities located at installations owned and operated by the Government may be authorized in connection with the performance of Government contracts only when:

- (i) there is no commercial test capability adequate for the testing needs, or
- (ii) substantial cost savings will result from use of the Government-owned test facilities.

Whenever any such use is authorized, adequate consideration comparable to commercial charges, if any, shall be obtained under any affected contract.

13-106 Furnishing Motor Vehicles to Government Contractors.

(a) For all major Department of Defense projects in which substantial numbers of motor vehicles, as described in 4-400, will be required for use by contractor personnel, a determination shall be made as early as possible in the program effort as to the feasibility of providing the vehicles as Government furnished equipment. Unless there are substantial reasons to the contrary, the vehicles shall be so provided when the following conditions are met:

(i) the Government contract will bear the entire cost of the vehicle program,

(ii) the prospective contractors do not have, or would not be expected to have, an existing and continuing capability for providing the vehicles necessary to perform the contract from their own resources;

(iii) the number of vehicles required in the performance of the contract is predictable with a reasonable degree of accuracy and is expected to remain fairly constant over a period of one year or more; and

(iv) substantial savings can be expected.

(b) The required vehicles shall not be provided by the Government when they will be used to support the normal and continuing operation of a contractor in the performance of defense contracts generally (or with a mix of use in commercial activities) and the cost thereof would be distributed in overhead among unrelated contracts or partially allocated to commercial use.

(c) All Government furnished vehicles will be identified as contractor-operated vehicles, to distinguish them from vehicles operated by components of the Department of Defense, as prescribed in Section VIII of the Joint Procedures for Management of Administrative Use Motor Vehicles (AR 58-1; OPNAV P 44-2; AFM 77-1; MCO P11240.46; DSAR 4510.5).

13-107 Control of Government Property. The control of Government property shall be in accordance with the provisions of Appendix B to this Regulation except, in contracts with educational or other nonprofit organizations, Appendix C to this Regulation is applicable; unless otherwise authorized in this Section XIII.

13-108 Correction of Defective System for Control of Government Property. When the property administrator is not successful in obtaining compliance with contract requirements, he shall advise the administrative contracting officer. If the administrative contracting officer concurs with the property administrator, he shall advise the contractor in writing of the changes or additions required in his property control system and shall establish a schedule for accomplishment of the corrective actions. The contractor shall be informed that approval of his property control system will be withheld (or withdrawn if previously approved) unless corrective action is accomplished within the specified period. Such notice shall also advise the contractor that in the event approval of his property control system is withheld (or withdrawn if previously approved) his liability for loss or damage may be increased. If the contractor fails to make satisfactory progress for correction of the deficiencies in accordance with the schedule, the administrative contracting officer shall advise him in writing, with a copy to the property administrator, that approval of his property control system is, as the case may be, withheld or withdrawn.

GOVERNMENT PROPERTY

Part 2—Material

13-201 Policy on Furnishing Material. It is the general policy of the Department of Defense that contractors will furnish all material required for the performance of Government contracts. However, the Government should furnish material to a contractor when it is determined to be in the best interest of the Government by reason of economy, standardization, the expediting of production, or other appropriate circumstances.

13-202 Procedure.

(a) Material to be furnished by the Government shall be set forth in the solicitation in sufficient detail to permit evaluation by prospective contractors.

(b) Where material is to be furnished by the Government, the contract shall state whether the requisitioning documentation is to be prepared by the contractor or the procuring activity. When the responsibility is placed upon the contractor, such documentation shall be prepared in accordance with the "Manual for Military Standard Requisitioning and Issue Procedure (MILSTRIP) for Defense Contractors," Appendix H.

13-203 Changing the Amount of Material To Be Furnished by the Government.

(a) At any time after a contract has been entered into, whether as a result of formal advertising or negotiation, the contract may be bilaterally modified to provide for the furnishing of Government material, or to increase the amount to be furnished, provided there is adequate consideration for such modification.

(b) When it is anticipated that substantial quantities of Government material will become available for the contract by transfer from another contract or otherwise, the contract may provide that a unilateral increase in the amount of material to be furnished by the Government may be ordered by the contracting officer, and that the contract shall be equitably adjusted therefor.

(c) Unilateral decreases in or substitutions for the material specified under a contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with paragraph (b) of the appropriate Government Property clause in Part 7.

13-204 Disposition. The disposition of residual Government material shall be in accordance with Departmental regulations governing the disposition of surplus property. See Section XXIV for disposition of contractor inventory.

Part 3—Providing Government Property to Contractors

13-301 Providing Facilities.

(a) It is the policy of the Department of Defense that contractors will furnish all facilities required for the performance of Government contracts. Facilities will not be provided to contractors for restoration, replacement, modernization or other purpose except as follows:

- (i) for use in a Government owned contractor operated plant operated on a cost-plus-fixed-fee basis;
- (ii) for support of industrial preparedness programs;
- (iii) when—
  - (A) the Secretary of the Department or his designee, in the case of new facilities, or an authorized official of the Department in the case of existing Government owned facilities, determines that: (1) the Defense contract cannot be fulfilled by any other practical means, or (2) it is in the public interest; and
  - (B) the contractor, represented by an executive corporate official, or his equivalent in non-corporate entities, either expresses in writing his unwillingness or financial inability to acquire the necessary facilities with his resources, or explains in writing that time will not permit him to make the necessary arrangements to obtain timely delivery of such facilities to meet defense requirements even though he is willing and financially able to acquire the facilities. In this latter case, existing Government-owned facilities (not new purchases) may be provided until the contractor purchased facilities are delivered and installed;

  or
- (iv) as components of special tooling (see 13-101.5) or special test equipment acquired or fabricated at Government expense (see 13-101.6).

New facilities shall not be furnished unless existing Government-owned facilities are either inadequate or cannot be economically furnished.

(b) In any case, competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must be moved into plants of contractors unless adequate price competition cannot be otherwise obtained. In the latter case, the contractor statement under (a)(iii)(B) above shall not be required, but contractors shall be required to identify the Government-owned facilities desired to be moved into their plants.

(c) New facilities shall not be provided by the Government where an economical, practical and appropriate alternative exists. Examples include:

- (i) procuring from sources not requiring Government-owned facilities;
- (ii) requiring the contractors to make full utilization of subcontractors possessing adequate and available capacity;
- (iii) having the contractor rent facilities from commercial sources; and
- (iv) using existing Government-owned facilities.

(d) New construction or improvements having general utility shall not be provided with appropriations for research or development unless authorized by law.

(e) Facilities shall not be provided by the Government to contractors under this Section solely for non-government use.

(f) Facilities having a unit cost of less than $1,000 shall not be provided to contractors except:

(i) nonprofit institutions of higher education or other nonprofit organizations whose primary purpose is the conduct of scientific research (see 4–116.3);

(ii) contractors operating a Government-owned plant on a fee basis;

(iii) contractors performing on-site at Government installations; or

(iv) in contracts which specifically authorize, subject to the contracting officer's approval, the contractor to either acquire or fabricate special tooling or special test equipment and components thereof.

(g) Prior to acquiring new facilities listed in the joint DoD handbooks referenced in 13–312 and having an item acquisition cost of $1,000 or more, DoD Industrial Plant Equipment Requisition (DD Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tenn. 38102, to ascertain whether existing Government-owned facilities can be utilized. No acquisition of any listed item shall be made until a certificate of nonavailability is received from the Defense Industrial Plant Equipment Center. However, prior to issuing a certificate of nonavailability, DIPEC shall determine if technical data (*e.g.*, parts listings, maintenance, overhaul and repair manuals, wiring diagrams, etc.) required for use in the maintenance and repair of the new facilities, are available. If it is determined that such data is not available at the time of issuance of the nonavailability certificate for equipment, DIPEC may request, by an appropriate instruction in block 51 of DD Form 1419, that an additional set of the technical (maintenance) data be acquired with the new facilities when they are procured. This additional set of data shall be delivered to the repository address specified by DIPEC in block 51 of DD Form 1419. When warranted by the urgency of the situation, requests for screening may be submitted to DIPEC by whatever means determined expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment:

(i) case number;

(ii) PEC/SCC/NSN;

(iii) description data sufficient to enable DIPEC to make an urgency determination of availability;

(iv) date item required;

(v) name and address of requiring agency;

(vi) contract, appendix, item number and program;

(vii) statement as to whether item is for production or mobilization, replacement or modernization, whether item will be procured if not available from DIPEC, and date of availability from procurement; and

(viii) assigned urgency rating.

Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

(h) The proposed acquisition of automatic data processing equipment as defined in 1-201.29 shall be: (i) submitted through the Administrative Contracting Officer to Headquarters, Defense Logistics Agency, ATTN: Defense ADP Resource Office (DARO), Cameron Station, Alexandria, VA 22314, in accordance with DOD Manual 4160.19; and (ii) approved in accordance with 4-1104.13(a)(2).

13-302 Securing Approval for Facilities Projects.

(a) The Secretaries of the Military Departments or their designees and the Directors of Defense Agencies may approve requests for Government-owned facilities projects if—

(i) the facilities projects that are funded from procurement appropriations will be approved on a location basis and shall not exceed $5 million for all property efforts (expansion, modernization, rehabilitation, etc.) during 1 fiscal year;

(ii) it is a research and development-funded project that will not exceed $1 million; or

(iii) the total plant and equipment investment cost to support a specific major system or subsystem (including ammunition-related project requests) will not exceed $25 million during the projected acquisition or maintenance effort. (Approval authority shall not be redelegated lower than the level of Assistant Secretary.)

Approval may be granted only when there is compliance with all provisions of this regulation and DoD Directive 4275.5 "Acquisition and Management of Industrial Resources."

(b) All projects which will exceed the above limitations will be submitted to the Under Secretary of Defense for Research and Engineering for approval.

(c) Facilities projects that involve real property transactions shall not be undertaken prior to reporting such transactions to the Committees on Armed Services of the House of Representatives and the Senate, as required by 10 U.S.C. 2662, and during the 30-day period prescribed therein. Further, Congress must be notified in advance of starting any construction regardless of cost. If not included in the annual budget, submission to all appropriate Congressional Committees will be made by using DD 1391 Forms. Such reporting shall be accomplished in accordance with Departmental procedures consistent with 1-108.

13-303 Use of Facilities Contracts.

(a) Except as provided in (b) below, facilities shall be provided by the Government to a contractor or subcontractor only under a facilities contract.

(b) Facilities may be provided to a contractor under a contract other than a facilities contract when:

(i) the cumulative total acquisition cost (actual or estimated) of the facilities provided to the contractor at one plant or general location does not exceed $50,000;

(ii) the contract is for construction;

(iii) the contract is for the performance of work within an establishment or installation operated by the Government; or

(iv) the contract is for the performance of services involving the operation of a Government-owned plant or installation and the facilities provided are to be used only in connection with such contract, which shall, to the extent practicable, contain the clauses in Part 7 of Section VII.

When facilities are provided under a contract other than a facilities contract, the contract shall contain the appropriate Government Property clause, except where, pursuant to (iv) above, adequate contractual coverage is obtained through the use of clauses referenced in Part 7 of Section VII.

(c) Unless the contracting officer determines it to be impracticable, all facilities provided by a Procuring Activity for use by a contractor at any one plant or general location shall be governed by a single facilities contract.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but may be provided under a facilities contract when to do so is administratively desirable.

13-304 Furnishing Existing Government-owned Special Tooling.

(a) *General.* It is the policy of the Department of Defense that existing special tooling to which the Government has title, or the right to acquire title pursuant to the Special Tooling clause in 7-104.25, be offered to prospective contractors for use in performing Government contracts and subcontracts, if:

(i) to do so will not interfere with production or program schedules having a greater priority;

(ii) to do so is otherwise advantageous to the Government; and

(iii) its use would be authorized pursuant to 13-402 or 13-403 were it furnished.

(b) *Contract Provisions.* Special tooling shall be furnished pursuant to either the appropriate clause referenced in Part 7 of this Section or a facilities contract. In any case, the contract under which the special tooling is furnished shall contain a description thereof, and the terms and conditions applicable to its shipment to the plant of the contractor and to the cost of adapting and installing it.

13-305 Acquisition of Special Tooling.

13-305.1 *General.*

(a) *Policy.* It is the policy of the Department of Defense that contractors provide and retain title to special tooling required for the performance of defense contracts to the maximum extent consistent with sound procurement objectives. Government acquisition of title or the right to title in special tooling creates substantial administrative burden, encumbers the competitive procurement process and frequently results in the retention of special tooling without advantage commensurate with such burden. In certain instances, however, the acquisition of special tooling or rights thereto may help the Government obtain fair prices, recover the residual value of special tooling paid for by the Government, and increase competition in subsequent procurements by increasing the number of sources, where the tooling is susceptible of use by more than one contractor, considering its adaptability and all costs of movement. Additionally, the Government may require all or a substantial part of the tooling for subsequent in-house use. The particular circumstances of each procurement must be considered in determining whether the advantages of acquiring special tooling or rights thereto outweigh the disadvantages.

(b) *Application of Policy in Competitive and Noncompetitive Procurements.* In procurements where there is adequate price competition, the Government usually relies on the competition to obtain a fair charge for the amortization of special tooling provided by the contractor. Furthermore, in a competitive area, ownership of special tooling by one contractor is not likely to prevent others from competing in follow-on procurements. Thus, it is not generally appropriate for the Government to acquire special tooling or rights thereto in competitive procurements. However, where there is not adequate price competition, the Government typically pays the full cost of the special tooling regardless of who owns or has rights to it, and therefore it is usually appropriate for the Government to acquire special tooling or rights thereto. Moreover, Government ownership may make it easier to create competition in follow-on procurements. Where a decision is made not to take title to special tooling in a procurement without price competition, consideration shall be given to the need for special contract provisions covering contractor plans for future recovery of any initial special tooling costs in follow-on competitive procurements (see 3-813).

13-305.2 *Fixed-Price Contracts.*

(a) *General.* In fixed-price contracts where a certificate of current cost or pricing data is not required, special tooling or rights thereto shall not be acquired unless the contracting officer determines such acquisition to be advantageous to the Government, considering the factors set forth in (b) below.

(b) *Criteria for Acquisition.* In deciding whether to acquire special tooling or rights thereto, or to exercise the Government's acquisition rights under contracts or subcontracts pursuant to the Special Tooling clause set forth in 7-104.25, the following factors shall be considered:

(i) the current or probable future need of the Government for the items involved and the estimated cost of reproducing them if not acquired;
(ii) their estimated residual value;
(iii) the administrative and other expense incident to reporting, record keeping, preparation, handling, transportation, and storage;
(iv) the effect on pricing future contracts;
(v) the feasibility and probable cost of making the items available to other bidders or offerors in the event of future procurement;
(vi) the amount offered by the contractor for the right to retain the items; and
(vii) the contribution Government acquisition makes to future competition.

(c) *Criteria for Waiving Special Tooling Provisions in Subcontracts.* In determining whether rights to acquire special tooling from subcontractors are not of substantial interest to the Government so as to permit the omission of special tooling provisions from the affected subcontracts pursuant to paragraph (j) of the Special Tooling clause set forth in 7-104.25, the contracting officer shall consider the factors listed in (b) above. It is desirable that such determination be made before execution of the contract, to the extent practicable, in which case the price shall reflect the authorized omission of special tooling provisions in any affected subcontract. If this question is presented to the contracting officer after execution of the contract, he shall condition his determination upon securing the contractor's consent to an equitable reduction in the contract price to reflect any reduction in the price of the affected subcontracts resulting from the omission of such provisions.

(d) *Procedures.*

(1) If the contracting officer has decided not to acquire special tooling or rights thereto, he may include in the solicitation such information as he may have of current planning for future procurements of the item involved, consistent with security requirements. Offerors shall be advised in the solicitation that such statements are estimates and there is no assurance that any quantity will be procured.

(2) In formally advertised procurements, each item of special tooling to be acquired by the Government under the standards set forth above shall be clearly identified in the invitation for bids as a separate item, or by category if individual items are low in value, and the Special Tooling clause in 7-104.25 shall not be used.

(3) In negotiated procurements, each item of special tooling to be acquired under the standards set forth above shall be identified as a separate item in the solicitation and contract to the maximum extent practicable, or by category if individual items are low in value. If such identification is impracticable, title to special tooling may be obtained through use of the Special Tooling clause in 7-104.25. If the use of this clause will result in an undesirable acquisition of rights to some special tooling, the Schedule shall specify the special tooling not covered by the clause.

(e) *Protecting Government Interest in Contractor-owned Special Tooling.* Where the Government does not acquire special tooling or the rights thereto pursuant to (d) above, but will pay for a substantial portion of the special tooling in the price paid for supplies or services, special provisions may be included in the Schedule of a contract to give recognition to the equitable interest of the Government in the special tooling, if such interest is significant. For example:

(i) where there is a distinct possibility that the Government eventually may decide to acquire title to the special tooling, the contract may provide for an option in the Government to acquire the special tooling at a specified price or for an amount to be determined in accordance with specified standards (the criteria set forth in (b) above shall be considered in exercising such options); or

(ii) if the Government does not acquire or reserve the right to acquire title to the special tooling, the contract may provide for the contractor's future amortization of the special tooling under Government contracts.

13-305.3 *Cost Reimbursement Type Contracts.* Title to special tooling under cost reimbursement type contracts shall be acquired pursuant to the clauses set forth in 7-203.21 and 7-402.25.

13-306 Providing Special Test Equipment.

13-306.1 *Furnishing Existing Special Test Equipment.* It is the policy of the Department of Defense to offer existing Government-owned special test equipment to contractors when advantageous to the Government in the light of the factors set forth in 13-304. Government-owned components to be incorporated into special test equipment may also be offered in accordance with this policy. These components may be facilities, special test equipment, or cannibalized components of other special test equipment for which there is no further need.

13-306.2 *Acquisition of New Special Test Equipment.* New special test equipment may be acquired by a contractor for the Government when:

(i) advantageous to the Government in the light of the criteria set forth in 13-305.2(b) for special tooling in fixed-price contract, and

(ii) existing Government-owned special test equipment or components thereof cannot be made available.

13-306.3 *Contract Provisions for Acquiring Special Test Equipment.*

(a) In formally advertised procurements, each item or category, if individual items are low in value, of special test equipment to be furnished by the Government or to be acquired or fabricated by the contractor, shall be clearly identified in the invitation for bids.

(b) In negotiated procurements, if the special test equipment or components are known, the contract shall identify each item indicating whether it is to be (i) Government-furnished or (ii) acquired or fabricated by the contractor. Items costing less than $1,000 each may be shown in the aggregate by each category.

(c) In negotiated procurements, if the exact identification of special test equipment to be acquired or fabricated is unknown the contract shall contain the clause in 7-104.26.

13-306.4 *Review and Approval Procedures for Contractor Acquired Special Test Equipment.* Paragraph 7-104.26 requires the contractor to prepare and submit to the contracting officer a 'notice of intent to acquire or fabricate' items of special test equipment. Within thirty days from the date of receipt of the contractor's notice, the ACO shall:

(i) review proposed special test equipment items as to their necessity and classification as "Special;"

(ii) screen requirements other than electronic equipment with DIPEC in accordance with 13-306.5;

(iii) resolve any funding problems with the PCO;
and

(iv) notify the contractor of the Government's approval or disapproval of the proposed acquisition or fabrication, or that the equipment will be furnished by the Government.

13-306.5 *Screening Existing Government-owned Special Test Equipment.* To minimize the acquisition of new special test equipment or components thereof, the contracting officer shall, if the acquisition cost of any item or component is $1,000 or more, screen existing Government production and research property to ascertain whether any Government-owned property can be furnished in accordance with the policy set forth in 13-306.1. To accomplish such screening for any property listed in 13-312, DoD Industrial Plant Equipment Requisition (DD

Form 1419) shall be submitted to the Defense Industrial Plant Equipment Center, Memphis, Tenn., 38102. However, DIPEC screening for equipment in FSC 6625 (*Electrical and Electronic Properties Measuring and Testing Instruments*) is not required. When special test equipment is to be acquired in the manner described in 13-306.3(b), the screening shall be accomplished before contract award. When special test equipment is to be acquired in the manner described in 13-306.3(c), the contracting officer shall normally accomplish the screening and notify the contractor of the Government's election within the notice period provided in the Special Test Equipment clause in 7-104.26. Thereafter, the Government-owned items to be furnished shall be promptly shipped to the contractor and the contract shall be equitably adjusted pursuant to the Special Test Equipment clause. However, if the contracting officer determines that the savings anticipated from furnishing Government-owned items would be exceeded by costs that might be incurred as a result of delays or administrative actions, he may, except as to items listed in 13-312, waive the screening and shall immediately advise the contractor that the Government will not furnish the equipment. For items listed in 13-312, when warranted by the urgency of the situation, requests for screening may be submitted to the Defense Industrial Plant Equipment Center by whatever means deemed expedient. When submitting urgent screening requirements other than on a DD Form 1419, the following elements of information must be furnished for each item of equipment:

(i) case number;
(ii) PEC/SCC/NSN;
(iii) description data sufficient to enable DIPEC to make an urgency determination of availability;
(iv) date item required;
(v) name and address of requiring agency;
(vi) contract, appendix, item number and program;
(vii) statement as to whether item is for production or mobilization, replacement or modernization, whether item will be procured if not available from DIPEC, and the date of availability from procurement; and
(viii) assigned urgency rating.

Upon notification of availability by DIPEC, a DD Form 1419 will be submitted to DIPEC for each item accepted by the requestor. However, if DIPEC does not have the item available, or cannot furnish the item within the time specified by the requestor, DIPEC will furnish a statement of nonavailability including a certificate number. This statement will be the official Certificate of Nonavailability and will confirm that the plant equipment item has been screened against the idle inventory.

13-307 Providing Government Production and Research Property When Disposal Is Limited.

(a) *Nonseverable Property*. Government production and research property, other than foundations and similar improvements necessary for the installation of special tooling, special test equipment, and plant equipment (see B-102.10), shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable, unless the Head of a Procuring Activity determines that such location is necessary, and:

(i) the contract under which such property is provided contains a provision for reimbursing the Government for the fair value of the property at the completion or termination of the contract or within a reasonable time thereafter (for example, in appropriate cases, such a provision may require the contractor to purchase the property at a value to be determined by appraisal, or at a price equal to its acquisition cost less depreciation at a specified rate considering its estimated useful life, or may require the contractor to reimburse the Government for its scrap or salvage value if the Head of a Procuring Activity determines that its estimated useful life will not extend beyond the expiration of the facilities contract or the completion of the work for which the property was provided);

(ii) the Government has an option to acquire the underlying land; or

(iii) the contract under which such property is provided contains an alternate provision that the Secretary considers to be adequate to protect the interests of the Government therein (the authority of the Secretary under this subparagraph (iii) may not be delegated).

(b) *Property Subject to Patent or Other Proprietary Rights.* If patent or other proprietary rights of a contractor may restrict the disposal of Government production and research property, the condition in either (a)(i) or (a)(iii) above shall be satisfied before such property is provided.

13-308 Offer To Furnish Government Production and Research Property "As Is".

(a) Government production and research property may be offered on an "as is" basis in any solicitation for fixed-price type contracts, whether such property is in storage or in the possession of a contractor. In the latter event, the offer will be subject to the policy stated in 13-304(a)(i) regarding the relative priorities of the work involved.

(b) Government production and research property may be offered on an "as is" basis for the performance of fixed-price type contracts only if it can be inspected by bidders or proposers prior to the submission of their offers. In such cases, the solicitation shall include the clause set forth in 7-104.24(e) and shall state:

(i) the availability and location of the property, and the conditions under which it may be inspected;

(ii) that the property will be offered in its current condition, f.o.b. present location;

(iii) that bidders or proposers must satisfy themselves that the property is suitable for their use;

(iv) that any costs of transporting, installing, modifying, repairing, or otherwise making the property suitable for use shall be borne by the successful bidder or proposer;

(v) that evaluations will be made to eliminate any competitive advantage from the use of the property (see Part 5); and

(vi) the bidders or proposers to whom the property is offered, if it is not to be offered to all.

(c) If, in accordance with the policy stated in 13–402 and 13–403, the successful bidder or proposer is authorized to use property furnished on an "as is" basis, the Government shall furnish the property in its current condition, f.o.b. present location. If a facilities contract is used to furnish Government production and research property offered on an "as is" basis, the Schedule shall state that the contractor shall not be reimbursed thereunder for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

13–309 Changing Government Production and Research Property To Be Provided. The amount of Government production and research property specified under a contract to be provided may be increased by a bilateral modification of the contract. Such increases shall be made only when approved in accordance with the policies prescribed in this Part 3 and when the Government receives adequate consideration therefor. Unilateral decreases in or substitutions for the Government production and research property specified under a contract to be provided by the Government may be ordered by the contracting officer, subject to the equitable adjustment of the contract, in accordance with paragraph (b) of the appropriate Government Property clause referenced in Part 7.

13–310 Limited Offers. If it is not feasible to make Government production and research property available to all bidders or proposers, solicitations offering to furnish such property under this Part may limit the offer accordingly.

13–311 Reserved.

13–312 Items To Be Reported To and Screened by Defense Industrial Plant Equipment Center (DIPEC). The items to be reported to and screened by the Defense Industrial Plant Equipment Center in accordance with B–306.1, C–306.1, 13–301(g), 13–306.5 and 24–205.3(a) are listed in the following Joint DoD Handbooks.

INDEX OF INDUSTRIAL PLANT EQUIPMENT HANDBOOKS

(NOTE—Handbooks are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402)

FSC	TITLE	ARMY	NAVY	AIR FORCE	DSA	MARINE CORPS
6625	Electrical and Electronic Properties Measuring and Testing Instruments	SB 708-6625-1	NAVSUP Pub 5543	AFM 78-2	DSAH 4215.1	MCO P4870.52B
3220	Woodworking Machines	SB 708-3220-1	NAVSUP Pub 5500	AFM 78-7	DSAH 4215.2	MCO 4870.6C
3424, 4430	Industrial Furnaces and Ovens Volume 1 and 2	SB 708-4430-1	NAVSUP Pub 5502	AFM 78-8	DSAH 4215.4	MCO P4870.8B
6635	Physical Properties Testing Equipment	SB 708-6635-1	NAVSUP Pub 5504	AFM 78-10	DSAH 4215.6	MCO P4870.10C
3530, 3625	Textile Industries Machinery and Industrial Sewing Machines	SB 708-3500-1	NAVSUP Pub 5506	AFM 78-12	DSAH 4215.8	MCO P4870.12B
6636	Environmental Chambers	SB 708-6636-1	NAVSUP Pub 5508	AFM 78-14	DSAH 4215.10	MCO P4870.14C

FSC	TITLE	ARMY	NAVY	AIR FORCE	DSA	MARINE CORPS
3422, 3426	Rolling Mills, Drawing Machines and Metal Finishing Equipment	SB 708-3400-2	NAVSUP Pub 5510	AFM 78-15	DSAH 4215.12	MCO P4870.16C
3450, 3460, 3461, 5220	Portable Machine Tools, Metalworking Machinery Accessories and Precision Layout Tools	SB 708-3400-3	NAVSUP Pub 5511	AFM 78-16	DSAH 4215.13	MCO P4870.17B
6680, 6685	Liquid and Gas flow, Pressure, Temperature, Humidity, and Mechanical Motion Measuring and Controlling Instruments	SB 708-6600-1	NAVSUP Pub 5513	AFM 78-18	DSAH 4215.15	MCO P4870.19B
3635	Crystal and Glass Industries Machinery	SB 708-3635-1	NAVSUP Pub 5514	AFM 78-19	DSAH 4215.16	MCO P4870.20A
4440	Driers, Dehydrators, and Anhydrators	SB 708-4440-1	NAVSUP Pub 5515	AFM 78-20	DSAH 4215.17	MCO P4870.21B
6650, 6670	Scales, Balances and Optical Instruments	SB 708-6600-2	NAVSUP Pub 5516	AFM 78-25	DSAH 4215.18	MCO P4870.22B
3680	Foundry Equipment	SB 708-3680-1	NAVSUP Pub 5517	AFM 78-23	DSAH 4215.19	MCO P4870.23A
6695	Combination and Miscellaneous Instruments Including Dynamometers	SB 708-6695-1	NAVSUP Pub 5519	AFM 78-30	DSAH 4215.21	MCO P4870.25D
4920	Aircraft Maintenance and Repair Shop Specialized Equipment	SB 708-4920-1	NAVSUP Pub 5521	AFM 78-33	DSAH 4215.23	MCO P4870.27B
4330	Centrifugals, Separators and Filters	SB 708-4330-1	NAVSUP Pub 5522	AFM 78-27	DSAH 4215.24	MCO P4870.28C
6630, 6640	Chemical Analysis and Laboratory Instruments	SB 708-6600-3	NAVSUP Pub 5529	AFM 78-38	DSAH 4215.30	MCO P4870.35B
3615, 3660	Pulp and Paper Industries and Size Reduction Machinery	SB 708-3600-1	NAVSUP Pub 5532	AFM 78-44	DSAH 4215.33	MCO P4870.38B
3620	Rubber and Plastics Working Machinery	SB 708-3620-1	NAVSUP Pub 5534	AFM 78-28	DSAH 4215.35	MCO P4870.40B

FSC	TITLE	ARMY	NAVY	AIR FORCE	DSA	MARINE CORPS
3611, 3685, 3693, 3694, 3695	Marking, Metal Container, Assembly, Clean Work Stations, and Miscellaneous Industry Machinery	SB 708-3600-2	NAVSUP Pub 5535	AFM 78-26	DSAH 4215.36	MCO P4870.41B
3650	Chemical and Pharmaceutical Products Manufacturing Machinery	SB 708-3650-1	NAVSUP Pub 5536	AFM 78-45	DSAH 4215.37	MCO P4870.42A
4940	Miscellaneous Maintenance and Repair Shop Specialized Equipment	SB 708-4940-1	NAVSUP Pub 5537	AFM 78-48	DSAH 4215.38	MCO P4870.43A
3690, 4925	Specialized Ammunition and Ordnance Machinery	SB 708-4900-1	NAVSUP Pub 5538	AFM 78-49	DSAH 4215.39	MCO P4870.44A
3405	Metalworking Saws and Filing Machines	SB 708-3405-1	NAVSUP Pub 5539	AFM 78-34	DSAH 4215.40	MCO P4870.47B
3418	Planers and Shapers (Includes Shapers, formerly Part of FSC 3419)	SB 708-3418-1	NAVSUP Pub 5540	AFM 78-37	DSAH 4215.41	MCO P4870.48A
3431, 3432, 3433, 3436, 3438	Welding, Heat Cutting, and Metalizing Equipment	SB 708-3400-4	NAVSUP Pub 5541	AFM 78-39	DSAH 4215.42	MCO P4870.49A
3408, 3410	Machining Centers, Way Type Machines, Electrical and Ultrasonic Erosion Machines	SB 708-3400-5	NAVSUP Pub 5542	AFM 78-41	DSAH 4215.43	MCO P4870.50B
3419	Miscellaneous Machine Tools	SB 708-3400-6	NAVSUP Pub 5547	AFM 78-46	DSAH 4215.44	MCO P4870.51A
3413	Drilling and Tapping Machines	SB 708-3413-1	NAVSUP Pub 5548	AFM 78-50	DSAH 4215.45	MCO P4870.53B
3411, 3412, 3414	Boring Machines, Broaching Machines, Gear Cutting and Finishing Machines	SB 708-3400-7	NAVSUP Pub 5549	AFM 78-51	DSAH 4215.46	MCO P4870.55A
4910	Motor Vehicle Maintenance and Repair Shop Specialized Equipment	SB 708-4910-1	NAVSUP Pub 5550	AFM 78-52	DSAH 4215.47	MCO P4870.54A

FSC	TITLE	ARMY	NAVY	AIR FORCE	DSA	MARINE CORPS
3441, 3442, 3443, 3444, 3445, 3446, 3447, 3448, 3449	Secondary Metal Forming and Cutting Machines	SB 708-3400-81	NAVSUP Pub 5551	AFM 78-53	DSAH 4215.48	MCO P4870.56A
3416	Metalworking Lathes	SB 708-3416-1	NAVSUP Pub 5552	AFM 78-54	DSAH 4215.49	MCO P4870.57A
5860	Stimulated Coherent Radiation Devices (Lasers)	SB 708-5860-1	NAVSUP Pub 5553	AFM 78-55	DSAH 4215.50	MCO P4870.58B
3415	Grinding Machines	SB 708-3415-1	NAVSUP Pub 5554	AFM 78-56	DSAH 4215.51	MCO P4870.59
3417	Milling Machines	SB 708-3417-1	NAVSUP Pub 5555	AFM 78-57	DSAH 4215.52	MCO P4870.60A
3670	Specialized Semiconductor, Microelectronic Circuit Board Manufacturing Machinery.	SB 708-3670-1	NAVSUP Pub 5557	AFM 78-58	DSAH 4215.53	MCO P4870.61

GOVERNMENT PROPERTY

Part 4—Use and Rental of Government Property

13–401 Policy. It is the policy of the Department of Defense to put Government production and research property which is in the possession of a contractor or subcontractor to the greatest possible use in the performance of Government contracts or subcontracts, so long as such use does not confer a competitive advantage on the contractor or subcontractor contrary to the policies set forth in Part 5.

13–402 Authorizing a Contractor To Use Government Production and Research Property Without Charge.

(a) A contractor may use Government production and research property without charge:

(i) in the performance of—

(A) prime contracts which specifically authorize use without charge;

(B) subcontracts of any tier if the contracting officer having cognizance over the prime contract concerned has authorized use without charge by:

(I) approving a subcontract specifically authorizing such use;

(II) Including such authorization in the prime contract; or

(III) by otherwise approving such use in writing;

(C) contracts of foreign government if use without charge has been authorized in writing pursuant to 13–406; or

(D) research, development, or educational work by nonprofit organizations if the contracting officer having cognizance of such property approves such use in writing after obtaining the authorization required by 13–407;

(ii) *provided*, as to (A) and (B) of (i) above—

(A) the procedures set forth in Part 5 are complied with;

(B) the contracting officer having cognizance of the prime contract determines that the Government will receive adequate consideration for the use of the property through reduced costs for the supplies or services or otherwise; and

(C) a concurrence in the proposed use of the property in accordance with (b) and (c) below is obtained.

(b)(1) A contracting officer desiring to authorize use of Government production and research property under the cognizance of another contracting officer may request the latter to give his concurrence in such use. If concurrence is denied, the resolution procedures set forth in (c) below shall be employed.

(2) Unless its use is authorized by the solicitation, each solicitation shall require that any contractor or subcontractor desiring to use Government production and research property in his possession in the performance of the proposed Government contract or subcontract shall request the contracting officer having cognizance of such property to give his written concurrence in such use. Such concurrence shall be given whenever possible and shall contain any information required by 13–502 or 13–503.

(c) If the contracting officer having cognizance of Government production and research property refuses to give the concurrence called for by (b)(2) above, the contractor may report the matter to the procurement contracting officer, who may then request permission of the contracting officer having cognizance over such property to authorize its use. The latter shall respond promptly to this request. In the event of a disagreement between the two contracting officers, they shall refer the matter to higher authority.

(d) Notwithstanding (a) above, a contract may be modified to provide for the use of Government production and research property on a rent-free basis, if the contract is equitably adjusted to reflect the elimination of rent and any other amount attributable thereto.

13–403 Rental of Government Production and Research Property.

(a) When use of Government production and research property is authorized by the contracting officer having cognizance of the property, rent computed in accordance with 13–404 shall be charged for such use except where use without charge is authorized under 13–402. If this contracting officer refuses to grant such authorization with respect to work for the Government, the contracting officer having cognizance of the procurement may refer the matter to the higher echelons of authority referred to in 13–402(c).

(b) When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor solely for commercial use pursuant to this Section (see 13–301(e)).

(c) Each contracting officer having cognizance of Government production and research property shall be responsible for the collection of rent thereon.

13–404 Rental Rates and Policies Applicable to the Use of Government Production and Research Property.

(a) Except as provided below, the rent for all Government production and research property shall be computed in accordance with the Use and Charges clause set forth in 7–702.12 for facilities. If the Secretary or his designee determines it to be in the best interest of the Government, rent for classes of production and research property other than machine tools (Federal Supply Classes 3405, 3408, 3410, 3411 through 3419) and secondary metal-forming and cutting machines (Federal Supply Classes 3441 through 3449 may be charged on some other equitable basis. In such cases, the Use and Charges clause should be appropriately modified.

(b) The rental charge required by (a) shall not be applicable to wholly Government-owned plants operated by private contractors on a fee basis. However, asset use charges in accordance with 13–406(c)(ii) are applicable for sales to foreign countries and international organizations.

(c) Except for Foreign Military Sales and direct commercial sales to foreign countries or international organizations, the rental charge required by (a) shall not be applicable to:

(i) items of equipment which are of such size or complexity, or have such performance characteristics, that they present unusual problems in relation to the time required for their preparation for shipment, installation, and preparation for operation; *provided*, that the General Services Administration, Federal Preparedness Agency, has approved the general program involving such equipment;

(ii) Government production and research property left in place or installed on contractor-owned property for mobilization or future production purposes of the Government; *provided*, that a rental charge computed in accordance with (a) shall apply to so much of such property or its capacity as may be used or authorized for use; or

(iii) such other Government production and research property as may be otherwise excepted by the Office of Emergency Preparedness.

13-405 Non-Government Use of Industrial Plant Equipment (IPE).

(a) The prior written approval of the contracting officer is required for any non-Government use of active Government-owned industrial plant equipment (see B-102.11). Before non-Government use exceeding 25% may be authorized, prior approval of the Assistant Secretary of the Army (RD&A), Assistant Secretary of the Navy (MRA&L), Assistant Secretary of the Air Force (RD&L), or Director of Defense Logistics Agency shall be obtained. This authority shall not be redelegated without formal OUSDR&E(AP) approval. Requests requiring Departmental level approval should be submitted by the contractor to the cognizant contract administration office at least six weeks in advance of the projected use and shall include:

(i) the total number of active IPE items involved and total acquisition cost thereof; and

(ii) an itemized listing of active equipment having an acquisition cost of $25,000 or more, showing for each such item the nomenclature, production equipment code, year of manufacture, and the acquisition cost.

(b) The percentage of non-Government use shall be computed on the basis of time available for use. For this purpose, the contractor's normal work schedule as represented by scheduled production shift hours shall be used. The base time period for determining percentages of non-Government use shall be neither less than three months nor more than one year. Non-Government use of industrial plant equipment located at a single plant may be averaged for all items used having a unit acquisition cost of less than $25,000. Equipment having a unit acquisition cost of $25,000 or more shall be considered on an item-by-item basis.

(c) The approvals under subparagraph (a) may be granted only when it is in the interest of the Government (i) to keep the equipment in a high state of operational readiness through regular usage; (ii) because substantial savings to the Government would accrue through overhead cost sharing and receipt of rental; or (iii) to avoid an inequity to the contractor who is required, at the Government's request, to retain the equipment in place, often intermingled with contractor-owned equipment required for commercial production. Approval for non-Government use shall be for a period of not more than one year. Approval for non-Government use in excess of 25% shall be for a period of not less than three months.

(d) Approving officials shall retain for periodic review, sufficient documentation of the circumstances justifying non-Government use approvals.

13-406 Use of Government Production and Research Property on Work for Foreign Governments or International Organizations.

(a) The Arms Export Control Act provides, in part, that the DoD Offer and Acceptance (DD Form 1513) for the sale of defense articles or defense services to any foreign country or international organization shall include appropriate charges for any use of plant and production equipment in connection with such defense articles. It is the policy of the Department of Defense that charges for use of Government production and research property shall be assessed whether on a DOD Foreign Military Sale or a direct commercial sale, where such property is being used in the performance of services or the manufacture of articles for foreign countries or international organizations.

(b) The prior written approval of the contracting officer having cognizance of the property is required for the use of Government production and research property on work for foreign countries or international organizations. Such approval may be granted only if use will not interfere with foreseeable requirements of the United States, and if:

(i) the work is undertaken as a DoD Foreign Military Sale, or

(ii) in the case of a direct commercial sale, the foreign country or international organization would be authorized to place the contract with the Department concerned under the Arms Export Control Act.

(c) Charges for contractor use of Government production and research property on work for foreign governments or international organizations shall be collected as follows:

(i) rental charges shall be applied and computed in accordance with 13-404(a) and 7-702.12 and shall be included in the contractor's proposed price. However, rent shall not be assessed against special tooling and special test equipment when the recoupment thresholds established in 1-2402 and 6-1306 are met. Where the recoupment thresholds are not met, charges for special tooling and special test equipment shall be assessed by an equitable method when determined by the cognizant contracting officer to be administratively practicable. In the case of both direct commercial sales and FMS, the contractor shall pay the rental due the Government by check made payable to the office designated for contract administration; and

(ii) *Asset Use Charges* as required by DoD Instruction 2140.1 (*Pricing of Sales of Defense Articles and Defense Services to Foreign Countries and International Organizations*) shall be computed and assessed by the DoD officials responsible for presentation of the DD Form 1513, and shall be applied only to Government assets for which the Use and Charges clause set forth in 7-702.12 is not appropriate (see 13-303(b)). This computation and assessment is not the responsibility of the contracting officer.

(d) Requests for waivers or reduction of charges for the use of Government production and research property shall be submitted to the contracting officer who shall refer the matter through procurement channels. Such approval may be granted only by the Director, Defense Security Assistance Agency for particular sales which would, if made, significantly advance U. S. Government interests in North Atlantic Treaty Organization (NATO) standardization, or foreign procurement in the United States under coproduction arrangements.

(e) Rental charges for the use of U.S. Government production and research property on commercial sales of Defense items to the Government of Canada are waived through 31 July 1982.

13–407 Use of Government Production and Research Property Without Charge by Nonprofit Organizations. The contracting officer cognizant of Government production and research property in the possession of a nonprofit organization may authorize the use of such property by such organization without charge, for research, development or educational work, if:

(i) such use is directly or indirectly in the national interest;

(ii) such use is not for the direct benefit of a profit-making organization; and

(iii) the Government receives some direct benefit from such use (such benefit shall, at a minimum, include the furnishing of a report by the contractor on the work for which the property was provided, and may include rights to use the results of the work without charge, or any other benefit that may be appropriate).

13–408 Use of Government Production and Research Property on Independent Research and Development Programs. The contracting officer having cognizance of the property may authorize use of Government production and research property on a contractor's independent research and development (IR&D) (see 15–205.35) *provided* that:

(i) use does not conflict with the primary use of the property;

(ii) use does not result in retention by the contractor of property which could otherwise be released;

(iii) the contractor agrees not to include as a charge against any Government contract the rental value of such property used on his IR&D program; and

(iv) a rental charge for the portion of the contractor's IR&D program cost allocated to commercial work, computed in accordance with 13–404, is deducted from any agreed upon Government share of the contractor's IR&D costs.

Part 5—Competitive Advantage

13-501 Policy. It is the policy of the Department of Defense to eliminate the competitive advantage that might otherwise arise from the acquisition or use of Government production and research property. This is accomplished by charging rental or by use of rental equivalents in evaluating bids and proposals as provided in 13-502 and 13-503. The only exception to this general policy is stated in 13-505, which provides that certain costs or savings to the Government related to providing such property to contractors shall be considered in such evaluation, regardless of any competitive advantage that may result from this exception.

13-502 Advertised Procurements—Use of Existing Government Production and Research Property.

13-502.1 *General.* In formally advertised procurements, the competitive advantage that might otherwise accrue to a contractor from the use of existing Government production and research property shall be eliminated by adding an evaluation factor to each bid for which such use is requested, or where the use of an evaluation factor is not practical, by charging rent for such use.

13-502.2 *Procedures for Use of Evaluation Factors.* Where an evaluation factor is used, it shall be equal to the rent, allocable to the contract, which would otherwise have been charged for such use. The invitation for bids shall set forth a description of the evaluation procedure to be followed, as required by 13-506, and it shall require all bidders to submit with their bids:

(i) a list or description of all Government production and research property which the bidder or his anticipated subcontractors propose to use on a rent-free basis, including property offered for use in the invitation for bids, as well as property already in possession of the bidder and his subcontractors under other contracts;

(ii) with respect to such property already in possession of the bidder and his proposed subcontractors, identification of the facilities contract or other instrument under which the property is held, and the written permission of the contracting officer having cognizance of the property for use of that property;

(iii) the months during which such property will be available for use, which shall include the first, last, and all intervening months, and with respect to any such property which will be used concurrently in performance of two or more contracts, the amounts of the respective uses in sufficient detail to support the proration required by 13-502.3(b); and

(iv) the amount of rent which would otherwise be charged for such use, computed in accordance with 13-404.

13-502.3 *Limitations.*

(a) The invitation for bids shall provide that no use of Government production and research property other than as described and permitted pursuant to 13-502.2 shall be authorized unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with 13-404 is charged, or the contract price is reduced by an equivalent amount.

(b) If Government production and research property will be used on other work under one or more existing contracts for which use has been authorized (see 13–402 and 13–403), the evaluation factor shall be determined by prorating the rent between the proposed contract and such other work. The pro rata share applicable to a proposed contract shall be determined by multiplying the full rental charge for the use of Government production and research property for the period for which rent-free use is requested (*i.e.*, the full charge for the requisite number of rental periods computed in accordance with paragraph (b)(2) of the Use and Charges clause in 7–702.12, before application of the credit for rent-free use) by a fraction the numerator of which is the amount of use of such property requested by the contractor under that contract determined in accordance with paragraph (b)(1)(iv) of the Use and Charges clause and the denominator of which is the sum of the previously authorized use of the property by the contractor for the period and the use requested under the proposed contract.

13–502.4 *Rent.* If competitive advantage is to be eliminated by charging rent, any bidder or subcontractor may use Government production and research property after obtaining the written approval of each contracting officer having cognizance of such property. Rent shall be charged for such use in accordance with 13–404.

13–503 Negotiated Procurement—Use of Existing Government Production and Research Property. In negotiated procurements, competitive advantage arising from the use of Government production and research property shall be eliminated by the use of an evaluation factor established in accordance with 13–502, except when the procurement contracting officer determines that the use of an evaluation factor would not affect the choice of contractors.

13–504 Residual Value to the Government of Special Tooling and Special Test Equipment To Be Acquired in Competitively Negotiated Procurements.

(a) In competitively negotiated procurements that permit the acquisition of special tooling or special test equipment, an evaluation of the residual value of such property to the Government may be made where practicable in accordance with (b) and (c) below. Such an evaluation is appropriate in cases where the contracting officer has determined that such property will have a reasonably foreseeable future usefulness and related residual value beyond the period of use on the award under consideration, and it is anticipated that the cost of such property as proposed by the several offerors may be a factor in making the award. Such an evaluation is not appropriate in cases where the resulting contract is to provide for the acquisition of the special tooling or special test equipment as an end item.

(b) The purpose of evaluating the residual value of special tooling or special test equipment is to apportion to each proposal under consideration only that part of the total cost of such property which represents the amount of useful life to be consumed during performance of the resulting contract. Accordingly, the proposed price or cost of such property may be reduced for evaluation purposes by an amount representing the residual value to the Government of such property. In estimating such residual value, the following factors shall be considered:

(i) the useful life of the special tooling and special test equipment to be acquired,
(ii) its adaptability for use by other contractors or by the Government,
(iii) the reasonably foreseeable requirements for its future use, and

(iv) its scrap or salvage value.

(c) If the contracting officer decides to consider the residual value of special tooling or special test equipment in a competitively negotiated procurement, the solicitation shall give notice thereof and a statement of the reasonably foreseeable future requirements of the Government for the supplies in question, in order to afford offerors the opportunity to consider such residual value as a factor in making their proposals. If the solicitation does not contain such notice and statement but the contracting officer decides to consider the residual value of special tooling or special test equipment after receipt of the proposals, he shall during the negotiations give all offerors within a competitive range a notice and statement as above, and shall permit them to make such changes in their proposals as they may consider necessary as a result of the addition of the residual value factor.

13-505 Additional Evaluation Factors.

(a) If the furnishing of Government production and research property will result in direct and measurable costs and under the terms contained in the solicitation such costs are to be borne by the Government, additional factors, set forth in the solicitation either in the form of a dollar amount or a formula, shall be employed in the evaluation of bids or proposals. Such factors shall be limited to:

(i) the cost of reactivation from base package or storage;
(ii) the cost of rehabilitation and conversion; and
(iii) the costs of making such property available on a f.o.b. basis.

(b) If, under the terms contained in the solicitation, the costs of furnishing Government production and research property or making it suitable for use are to be borne by the contractor, as, for example, when such property is offered on an "as is" basis (see 13-308), no additional evaluation factors related to such costs shall be used.

(c) If measurable savings to the Government will result directly from the use of Government production and research property on the contract for which the solicitation is made, a dollar amount representing such savings shall be set forth in the solicitation and employed in the evaluation of bids or proposals. Examples of such savings include:

(i) savings occurring as a direct result of activation of idle tools being maintained in idle status at known cost to the Government; and
(ii) avoidance of the cost of deactivation and placing active tools in layaway or storage, or of maintaining them in an idle state where the prospective costs are known and firm decisions have been made that such tools will be laid away or stored if not used on the contract for which solicitation is made.

Avoidance of the costs of initial lay-away or storage shall not be evaluated when such costs will merely be deferred by the proposed use.

13-506 Solicitations—Description of Evaluation Procedure. Generally, where Government production and research property is offered for use in a competitive procurement, the solicitation should provide that the user will assume all costs related to making the property available (such as transportation or rehabilitation costs), to avoid the need for separate evaluation of such costs. Where this is not feasible, or it is otherwise in the Government's interest, the Government may assume certain of such costs provided they are included in the evaluation of bids or proposals. The rental charges or equivalent factors to be used to eliminate competitive advantage, as well as all costs or savings to be evaluated, shall be clearly shown in the solicitation to insure that all prospective bidders or offerors understand the basis to be used for selection of the lowest bid or proposal and take these factors into account in preparing their bids or proposals.

GOVERNMENT PROPERTY

Part 6—Administration of Government Property

13-601 Maintenance.

13-601.1 *Facilities Contracts.*

(a) To the extent practicable, the Schedule of each facilities contract containing the Maintenance clause set forth in 7-702.14 shall specify or incorporate by reference a normal maintenance program.

(b) Where no provisions are made pursuant to (a) above, the contractor shall be required to submit a normal maintenance program to the contracting officer as promptly as practicable after the execution of the facilities contract. The contracting officer shall examine such program and shall negotiate with the contractor for an agreement thereon.

(c) Any normal maintenance program that is agreed to pursuant to either (a) or (b) above shall provide specific details which will insure protection, preservation, maintenance, and repair of the Government production and research property in accordance with sound industrial practice. In addition, such program shall include general language covering any aspects of maintenance which are not specifically provided for. Such program may also provide for:

- (i) a specified degree of inspection procedures, maintenance, and repairs that is less than sound industrial practice as to any part of the Government production and research property which is determined by the Department concerned to be nonessential to future utilization of the property as a whole; and
- (ii) reimbursement by the Government for the cost of protecting, preserving, maintaining, and repairing Government production and research property not authorized for use by the contractor.

(d) The contracting officer shall order a decrease in maintenance when the current maintenance is not necessary to assure the standards set forth in (c) above, and when such an order will result in savings to the Government.

(e) The contracting officer may order more than the normal maintenance when necessary, but only after authority has been obtained pursuant to 13-302 and adequate funds are available therefor. The Government shall reimburse the contractor for the costs incurred.

(f) Maintenance, modernization, or repair work to be performed under a facilities contract may be suitable for performance by small business concerns. When in the judgment of the contracting officer, it appears that such work is capable of performance by small business concerns, he shall include in the facilities contract the "*Use of Small Business Concerns as Subcontractors*" clause in 7-705.33 and identify in the schedule the specific items of such work considered capable of performance by small business concerns.

13-601.2 *Contracts Other Than Facilities Contracts.* Government production and research property provided under a contract other than a facilities contract shall be maintained in accordance with sound industrial practice pursuant to the appropriate clause of the contract under which it is provided. However, the Schedule of any contract under which such Government production and research property is provided may contain specific maintenance requirements for such property when appropriate.

13-602 Risk of Loss or Damage and Liability. When justified by the circumstances of any particular contract, the contract may require the contractor to assume greater risks than those enumerated in the clause set forth in 7-702.18, or the applicable contract clause set forth in Part 7 of this Section, as appropriate.

13-603 Termination of Facilities Contracts. A facilities contract shall be terminated when the Government production and research property covered thereby is no longer required for the performance of Government contracts or subcontracts, unless such termination is detrimental to the Government's interests. The contractor shall not be granted the unilateral right, at his election, to extend the time during which he is entitled to use the property provided under the facilities contract.

13-604 Standby or Layaway Provision.

(a) A facilities contract may include appropriate provisions for maintenance and storage of Government production and research property in standby or layaway status. Such provisions shall include specifications for the care and maintenance of the property appropriate for its intended future use. These provisions may be the same as or different from the Maintenance clause set forth in 7-702.14, depending upon the purpose and scope of the standby or layaway provisions, the expected duration of the standby or layaway status and other pertinent considerations.

(b) If the Government is required to pay the contractor for maintenance and storage of Government production and research property in standby or layaway, the facilities contract shall define with particularity what constitutes standby or layaway, and when and under what circumstances such payments will commence and terminate with respect to all or any part of the property.

(c) The facilities contract shall provide that, if the contractor is required to pay any state or local property tax measured by his possession of or interest in Government production and research property in standby or layaway, he shall be reimbursed therefor to the extent provided under 15-205.41.

13-605 Retention of Special Tooling and Special Test Equipment. Upon termination or completion of a contract under which the Government has obtained title to or the right to acquire title to special tooling or special test equipment, the Procuring Activity shall review the Government's need for its continued retention. In addition, the Procuring Activity shall periodically review the Government's need for retaining all special tooling and special test equipment, not currently in use, to which it has title or the right to acquire title. In either case, consideration shall be given to the factors set forth in 13-305.2(b) in determining the Government's need for retention of the special tooling and special test equipment.

13-606 Reserved.

13-607 Insurance. When less than 75% of the total use of facilities is for Government work, consideration shall be given to requiring that the contractor procure and maintain insurance against loss of or damage to the facilities. If necessary, facilities contracts may be modified to require such insurance.

13-608 Property Control and Accounting Procedures. Property control and accounting procedures shall be maintained in accordance with the provisions of the "Control of Government Property in Possession of Contractors," Appendix B, and "Control of Government Property in Possession of Nonprofit Research and Development Contractors," Appendix C.

GOVERNMENT PROPERTY

Part 7—Contract Clauses, Government Property

13-701 Contract Clauses. Contract clauses and guidance as to their use in specific types of contracts are included in the following paragraphs:

(a) *Government Property—*
  (i) 3-608.2(b)(1)(viii) Small Purchases
  (ii) 7-104.24 Fixed Price Supply Contracts
  (iii) 7-203.21 Cost Reimbursement Type Supply Contracts
  (iv) 7-303.7 Fixed Price Research and Development Contracts
  (v) 7-402.25 Cost Reimbursement Type Research and Development Contracts
  (vi) 7-504.4 Personal Services Contracts
  (vii) 7-603.22 and 7-603.28 Fixed Price Construction Contracts
  (viii) 7-605.14 Cost Reimbursement Type Construction Contracts
  (ix) 7-702.18 Facilities Contracts
  (x) 7-901.5 Time and Material and Labor Hour Contracts
  (xi) 7-1401.11 Laundry and Dry Cleaning Contracts
(b) *Special Tooling—*
  (i) 7-104.25 Fixed Price Supply Contracts
(c) *Special Test Equipment—*
  (i) 7-104.26 Fixed Price Supply Contracts
  (ii) 7-204.38 Cost Reimbursement Type Supply Contracts
  (iii) 7-303.37 Fixed Price Research and Development Contracts
  (iv) 7-403.33 Cost Reimbursement Type Research and Development Contracts.

GOVERNMENT PROPERTY

Part 8—Administrative Practices

13-801 Appointment of Property Administrator.

(a) The selection, appointment and termination of appointment of property administrators shall be made in writing by the Head of a Procuring Activity or his designee for the Defense Supply Agency and by the head of the contract administration office (1-201.25) or his designee for the other Departments. In selecting qualified property administrators, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

(b) In considering experience, training and education, the following shall be evaluated:

(i) experience in accounting, material control, inventory control and allied functions;

(ii) formal education or specialization in such areas as evaluating, monitoring, administering, or coordinating industrial property programs or implementing plans and policies in support of diversified property control system;

(iii) knowledge of the provisions of this and other applicable regulations.

13-802 Assignment of Contracts for Property Administration.

(a) All Department of Defense contracts under which Government property will be provided and which will be performed at a single location by a contractor shall be assigned to a single property administrator.

(b) Each contract under which Government property will be provided to the contractor will be assigned in writing to a property administrator by the CAO. The assignment document shall contain the (i) name and address of the contractor, (ii) PII (contract) number, and (iii) type of contract. The ACO and the contractor shall be advised in writing of the assignment and any changes thereto.

(c) The assignment shall be terminated when:

(i) it has been determined that no Government property has been or will be furnished or acquired, or

(ii) the contract is reassigned to another CAO or to another property administrator.

13-803 Records of Government Property. Records of Government property established and maintained by the contractor pursuant to the terms of the contract shall be designated and utilized as the official contract records. Duplicate records shall not be furnished to nor be maintained by the Government personnel other than as provided for in this Regulation. Exceptions to this policy may be authorized by the procuring contracting officer if contract administration is retained by the purchasing office when Government property is furnished to a contractor (i) for repair or servicing and return to the shipping organization, (ii) for use on a Government installation, or (iii) under a contract with a short performance period or involving the Government property having an acquisition cost of $25,000 or less.

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SECTION XIV

PROCUREMENT QUALITY ASSURANCE

14–000 Scope of Section. This Section prescribes policies and procedures (i) to assure that supplies and services procured by the Department of Defense conform to the quality and quantity set forth in the contract and (ii) for the acceptance functions associated therewith.

14–001 Definitions. As used in this Section, the words and terms described in this paragraph shall have the meanings set forth below.

14–001.1 *Government Procurement Quality Assurance* means the Government function by which the Government determines whether a contractor has fulfilled his contract obligations pertaining to quality and quantity. This function is related to and generally precedes the act of acceptance as defined in 14–001.6 below.

14–001.2 *Contract Quality Requirements* means the detailed requisites for quality incumbent on the contractor, consisting of (i) all quality requirements contained in a contract; and (ii) the detailed contractual requisites provided by 14–101 incumbent on the contractor to substantiate conformance of product or service to quality requirements of the contract.

14–001.3 *Inspection* means the examination and testing of supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

14–001.4 *Testing* is an element of inspection and generally denotes the determination by technical means of the properties or elements of supplies, or components thereof, including functional operation, and involves the application of established scientific principles and procedures.

14–001.5 *Subcontractor* means any supplier, distributor, vendor, or firm which furnished supplies or services to or for a prime contractor or another subcontractor.

14–001.6 *Acceptance* means the act of an authorized representative of the Government by which the Government assumes for itself, or as agent of another, ownership of existing and identified supplies tendered or approves specific services rendered, as partial or complete performance of the contract on the part of the contractor.

14–001.7 *Off-The-Shelf Item* means an item produced and placed in stock by a contractor prior to the contractor receiving orders or contracts for the sale of the item. The contractor may produce the items to either commercial or military/federal item specifications or descriptions. Off-the-shelf items include items stocked by distributors for which Government contracts may be received.

PROCUREMENT QUALITY ASSURANCE

Part 1—General

14–101 Types of Contract Quality Requirements. There are five basic categories of contract coverage for assuring conformance of products or services to contract requirements:

(a) not including any specific quality requirement in the contract, in which case the Government does not perform any procurement quality assurance actions at source, but instead relies on the contractor's internal control to obtain the supplies or services specified in the contract;

(b) contractor responsibility provisions (14–101.1);

(c) standard inspection requirement (14–101.2);

(d) MIL-I-45208 Inspection System Requirement (14–101.3); and

(e) MIL-Q-9858 Quality Program Requirement (14–101.4). MIL-I-45208, Inspection System Requirement, or MIL-Q-9858, Quality Program Requirement, shall not be specified for off-the-shelf items.

14–101.1 *Contractor Responsibility Provisions*, making the contractor responsible for the inspection and test of products before offering them to the Government, are effected by:

(i) citing in the contract Federal-Military Specifications which contain a "Responsibility for Inspection" clause in Section 4, "Quality Assurance Provisions" of the Specifications;

(ii) citing in the contract Federal-Military drawings which carry a note relative to the contractor's responsibility for inspection and test and

(iii) including the clause in 7–103.24 in the contract.

14–101.2 *Standard Inspection Requirement* is a requirement that the contractor maintain an inspection system acceptable to the Government. This requirement is included in the standard inspection clauses (see, for example, paragraph (e) of the Inspection clause in 7–103.5(a)) and is not further defined by a Government specification. This requirement is appropriate when for reasons of practicability (*e.g.*, purchase of a commercial item) or because of the nature of the supplies (*i.e.*, the item serves a function that is not materially or consequentially related to military operations), it is not considered necessary to describe further what constitutes an acceptable inspection system.

14–101.3 *Inspection System Requirement* is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain an inspection system in accordance with a Government specification. This requirement shall be referenced in contracts when technical requirements are such as to require control of quality by in-process as well as final end item inspection, including control of such elements of the manufacturing process as measuring and testing equipment, drawings and changes, inspection, documentation and records. The objectives and essential elements of an inspection system are prescribed in MIL-I-45208, which shall be referenced in contracts when an inspection system requirement has been established.

14–101.4 *Quality Program Requirement* is a requirement, in addition to the Standard Inspection Requirement, that the contractor establish and maintain a quality program in accordance with a Government specification. Such a requirement shall be established when the technical requirements of the contract are such as to require control of work operations, in-process controls, and inspection, as well as attention to other factors (*e.g.*, organization, planning, work instructions, documentation control, advanced metrology). The objectives and essential elements of a quality program are prescribed in MIL-Q-9858 which shall be referenced in contracts when a quality program requirement has been established.

14-101.5 *Criteria for Applying Contract Quality Requirements.*

(a) Suggested aids in proper selection of contract quality requirements:

(i) Classification by type of contract quality requirement:

(A) *No Specific Contract Quality Requirement.* Generally used in purchases under Section III, Part 6, where there is no specific obligation on the contractor for the performance of inspection and no Government procurement quality assurance actions can be performed at source.

(B) *Contractor Responsibility Clause.* (See 14-101.1.) Use of this requirement alone is restricted to purchases under Section III, Part 6.

(C) *Standard Inspection Requirement.* (See 14-101.2.) Must be used on all fixed price supply contracts over $10,000. It may be used alone or in conjunction with Contractor Responsibility clause on purchases under Section III, Part 6. It must be used with the MIL-I-45208 and MIL-Q-9858.

(D) *MIL-I-45208 and MIL-Q-9858.* (See 14-101.3 and 14-101.4.) Technical personnel shall be consulted before including one of these specifications in a contract.

(ii) Classification by contract item technical description:

(A) *Commercial* (catalogs, drawings, industrial standards).

(B) *Military-Federal* (drawings, specifications).

(C) *Off-the-shelf* (See 14-001.7).

(iii) Classification by type of items:

(A) *Complex items* have quality characteristics, not wholly visible in the end item, for which contractual conformance must progressively be established through precise measurements, tests and controls accomplished during purchasing, manufacturing, assembly, and functional operations either as an individual item or in conjunction with other items.

(B) *Noncomplex items* have quality characteristics for which simple measurement and test of the end item is sufficient to determine conformance to contract requirements.

(iv) Classification by type of application:

(A) *Critical.* A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a military mission. Critical items may be either:

(i) peculiar, meaning items which have only one application, or

(ii) common, meaning items which have multiple applications.

Whether peculiar or common, purchases of critical items must have contract quality requirements.

(B) *Noncritical.* A noncritical application is any application which is not critical. Noncritical items may also be either peculiar or common.

(b) *Application of the Criteria.* Decisions must be made as to whether the item is off-the-shelf, or commercial or Military-Federal, complex or noncomplex and whether its application is critical or noncritical, peculiar or common. Once these decisions are made, the table below will indicate the proper contract quality requirement.

Item Technical Description	*Kind of Item*	*Application*	*Type of Contract Quality Requirement*
Commercial	Noncomplex	Noncritical Common	14–101(a)
Commercial	Noncomplex	Noncritical Peculiar	14–101(a)
Commercial	Noncomplex	Critical	14–101(c)
Commercial	Complex	Noncritical Common	14–101(a)
Commercial	Complex	Noncritical Peculiar	14–101(c)
Commercial	Complex	Critical	14–101(d)
Military-Federal	Noncomplex	Noncritical Common	14–101(c)
Military-Federal	Noncomplex	Noncritical Peculiar	14–101(c)
Military-Federal	Noncomplex	Critical	14–101(d)
Military-Federal	Complex	Noncritical Common	14–101(c)
Military-Federal	Complex	Noncritical Peculiar	14–101(d)
Military-Federal	Complex	Critical	14–101(e)
Off-the-Shelf	All	Noncritical	14–101(a)
Off-the-Shelf	All	Critical	14–101(c)

(c) The table in (b) above is intended for use as a guide in selecting the contract quality requirement normally considered appropriate for the given item criteria. However, where circumstances warrant, a contract quality requirement of a greater or lesser degree than that arrived at through use of this table may be specified by the PCO except for off-the-shelf items as defined in 14–001.7.

14–102 Responsibilities of the Contractor.

(a) The contractor is responsible for carrying out his obligations as set forth in the terms and conditions of the contract and in the applicable specifications.

Most Department of Defense contracts include, or reference, standard requirements, such as those in general provisions, special clauses for an inspection system or quality program, and performance and product specification requirements. The contractor is responsible for controlling product quality and for offering to the Government for acceptance only those supplies and services that conform to contract requirements and, when required, for maintaining and furnishing substantiating evidence of this conformance.

(b) The control of quality by the contractor may relate to, but is not limited to:

(i) manufacturing processes, to assure that the product is produced in accordance with technical requirements;
(ii) drawings, specifications, and engineering changes, to assure that manufacturing methods and operations reflect technical requirements;
(iii) testing and examination, to assure that practices and equipment provide the means for optimum evaluation of characteristics subjected to inspection;
(iv) reliability and maintainability assessment (life, endurance, and continued readiness);
(v) fabrication and delivery of products to assure that only conforming products are tendered to the Government;
(vi) technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications; and
(vii) preservation, packaging, packing and marking.

14–103 Responsibilities of the Government. The Government shall determine the type and extent of Government procurement quality assurance actions required, based upon the particular procurement. These actions may include:

(i) inspection of supplies and services;
(ii) review of the contractor's inspection system, quality program, or of any other means employed by the contractor to control quality and to comply with contract requirements;
(iii) maintenance of Government records to reflect actions, deficiencies, and corrective measures; and
(iv) review and evaluation of quality information, including reports from the user, to initiate required corrective actions or to adjust Government procurement quality assurance actions.

14–103.1 *Subcontracts.* Government procurement quality assurance at subcontractor's plants shall be performed only when necessary to assist the contract administration office cognizant at the prime contractor's plant. Paragraph 14–407 provides guidance on Government procurement quality assurance actions at the subcontract level.

14–103.2 *Specialized Inspections Reserved to the Government.* Although contracts generally require that contractors are responsible for performing inspection prior to submitting supplies to the Government, there are situations when contracts will provide for specialized inspections to be performed solely by the Government. Among situations for which specialized Government inspection is required are the following:

(i) test requirements necessitate the use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories (*e.g.*, ballistic testing of ammunition, unusual environmental tests, or simulated service tests); or

(ii) the contract requires Government testing for first article approval (see Section I, Part 19).

PROCUREMENT QUALITY ASSURANCE

Part 2—Responsibilities of Government Organizations

14–201 Organization Responsible for Technical Requirements.

(a) The activity responsible for technical requirements (*e.g.*, specifications, drawings and standards) is responsible for prescribing inspection, testing, or other contract quality requirements that are essential to assure the integrity of products and services.

(b) To the extent feasible, alternative but substantially equivalent inspection methods shall be provided in order to obtain wide competition and low cost. Contractor-recommended alternatives may be authorized when in the interest of the Government and after approval by the activity responsible for technical requirements.

(c) The activity responsible for technical requirements may also prepare instructions regarding the type and extent of Government inspections pertaining to contracts for specific supplies or services that are complex or for which unusual requirements have been established. Such instructions shall be kept to a minimum taking into account the policy contained in 14–403(a). Normally, issuance of these instructions will not be appropriate for standard commercial items except when items having critical characteristics are being purchased. After issuance of these instructions, production problems, product-oriented visits, user experience and input from the contract administration office shall be analyzed periodically to determine whether conditions warrant a change in type and extent of the inspection requirements. Such analysis may result in decreasing or increasing Government inspection. These instructions shall be prepared on a contract-by-contract basis and shall not be issued:

- (i) as a substitute for incomplete contract quality requirements;
- (ii) where the contract does not impose equal or greater inspection requirements on the contractor;
- (iii) encompassing broad or general designations such as "all requirements," "all characteristics," or "all characteristics in the classification of defects;"
- (iv) on routine administrative procedures; or
- (v) specifying continued inspection requirements when statistically sound sampling will provide an adequate degree of protection.

(d) In the preparation of such instructions, the technical activity shall consider, to the extent available and applicable, such factors as:

- (i) the past quality history of the contractor;
- (ii) the criticality of the materiel procured in relation to its ultimate use considering such factors as reliability, safety and interchangeability;
- (iii) problems encountered in the development of the product;
- (iv) problems encountered in the acquisition of the same or similar materiel;
- (v) previously generated feedback data from receiving, testing or using activities; and
- (vi) other contractor's experience in overcoming manufacturing problems.

When knowledge of the determining factors, which resulted in the requirement for Government inspection, would be useful to the contract administration office in performing the procurement quality assurance function, these factors should be provided to the contract administration office.

14-202 Purchasing Office.

(a) The purchasing office is responsible after coordinating, where necessary, with the technical activity for contractually formalizing requirements for quality and, within the provisions of 14-201(c), issuing Government inspection instructions to the contract administration office. The purchasing office shall include, in each solicitation and resultant contract, by contract clause, exhibit or specification reference, appropriate requirements for the contractor's control of quality for the supplies or services to be procured (see 14-302 through 14-304).

(b) The purchasing office may conduct, in conjunction where necessary, with the activity responsible for technical requirements, product-oriented surveys and evaluations to determine the adequacy of the technical requirements relating to quality and product conformance to design intent. The purchasing office may arrange with the contract administration office to participate in pre-award surveys, post-award, and preproduction conferences, and first article testing. The purchasing office may aid the contract administration office in the transition from research and development to production, aid the technical activity in improving the quality requirements in contracts when first designated for competitive procurement, and aid in ascertaining the source of difficulties associated with user experience reports.

14-203 Contract Administration Office.

(a) Except as otherwise specified in the contract, the contract administration office cognizant at a plant is responsible for the performance of Government procurement quality assurance actions. The contract administration office shall verify that the contractor has fulfilled contract quality requirements. It is the contract administration office responsibility to develop and apply effective and efficient procedures for Government procurement quality assurance. The contract administration office shall perform specific Government inspection actions when these actions are required in writing by the purchasing office. In implementing written Government inspection instructions, the contract administration office shall review these instructions and when appropriate, make recommendations to the purchasing office for their improvement in terms of both technical effectiveness and cost, particularly with respect to the utilization of Department of Defense personnel, equipment, and facilities. Written Government inspection instructions shall be continued on schedule as prescribed until the recommendation has been acted upon. The purchasing office is obligated to take appropriate action on such recommendation.

(b) The contract administration office shall report to the purchasing office any observed deficiencies in design or technical requirements, including contract quality requirements, and recommend necessary changes to the contract, specifications, or other requirements which will provide more effective operations or eliminate unnecessary costs.

PROCUREMENT QUALITY ASSURANCE

Part 3—Contract Provisions

14-301 Quality Assurance Clauses.

(a) The appropriate clauses referenced in 14-302 through 14-304 shall be inserted in contracts other than those entered into by use of DD Form 1155, Order for Supplies and Services/Request for Quotations (see Section III, Part 6).

(b) In purchases made by use of DD Form 1155 there is a requirement for the contractor to perform inspection; however, the nature of the item may make it desirable in exceptional cases to include other clauses listed in 14-302 through 14-304.

14-302 Standard Inspection Clauses. Where inspection is sufficient to assure that the supplies and services conform to contract requirements (see 14-101.2), the appropriate standard inspection clause prescribed in the listing below shall be inserted in the contract:

(i) 7-103.24 and 7-103.5(a), (b) or (c);
(ii) 7-203.5(a);
(iii) 7-302.4(a) or (b);
(iv) 7-402.5(a)(1) or (3);
(v) 7-402.5(b);
(vi) 7-602.10(a);
(vii) 7-602.11;
(viii) 7-702.6;
(ix) 7-703.6;
(x) 7-704.8;
(xi) 7-901.21; or
(xii) 7-1902.4 or 7-1909.5.

14-303 Inspection System Requirements. When the technical requirements of the contract are such as to require control of quality by in-process as well as final end item inspection, including control of such elements of the manufacturing process as measuring and testing equipment, drawings and changes, inspection, documentation, and records, the appropriate inspection system clause listed below, referencing the latest revision of MIL-I-45208, shall be used:

(i) 7-103.5(a), (b) or (c); 7-103.24 and 7-104.33;
(ii) 7-203.5(a) and (b);
(iii) 7-302.4(a) or (b) and (c);
(iv) 7-402.5(a)(1) or (3) and (c);
(v) 7-402.5(b) and (c);
(vi) 7-602.10(a) and (b);
(vii) 7-703.44; or
(viii) 7-901.21 and 7-901.25.

14-304 Quality Program Requirements.

(a) When the technical requirements of the contract are such as to require control of work operations, in-process controls, inspections and tests, as well as attention to other factors (*e.g.*, organization, planning, work instructions, documentation control, advanced metrology), the appropriate clause listed below, referencing the latest revision of MIL-Q-9858, shall be used. This paragraph does not apply to construction contracts.

(i) 7-103.5(a), (b) or (c); 7-103.24 and 7-104.28;

(ii) 7-203.5(a) and 7-204.10;
(iii) 7-302.4(a) or (b) and 7-303.15;
(iv) 7-402.5(a)(1) or (3) and 7-403.15;
(v) 7-402.5(b) and 7-403.15; or
(vi) 7-901.21 and 7-901.26.

(b) The contracting officer may delete nonapplicable portions of MIL-Q-9858 in contracts for material maintenance.

14-305 Places of Performance of Government Procurement Quality Assurance Actions.

14-305.1 *General.* Each contract shall designate the place or places where the Government reserves the right to perform those procurement quality assurance actions that it considers necessary to determine that supplies and services conform to contract requirements. Where the contract provides for Government procurement quality assurance actions at source, the place or places designated for such actions may not be changed without authorization of the contracting officer.

14-305.2 *Government Procurement Quality Assurance at Source.*

(a) When a contract requires the contractor to establish and maintain an inspection system or a quality program in accordance with 14-101.3 or 14-101.4, Government procurement quality assurance actions generally shall be performed at source.

(b) In addition to (a) above, Government procurement quality assurance actions shall be performed at source where:

(i) performance of such actions at any other point would require uneconomical disassembly or destructive testing;
(ii) special instruments, gauges, or facilities required for performance of such actions are available only at source;
(iii) performance of such actions at any other point would destroy or require the replacement of costly special packing and packaging;
(iv) Government procurement quality assurance during performance is essential; or
(v) supplies are destined for points of embarkation for overseas shipment (except as provided in 3-606.2, 14-305.3(b), and 14-306(c)).

(c) Where the contract provides for the performance of Government procurement quality assurance actions at source, these actions shall be taken at such times and places (including any stage in the manufacturing process at both the contractor's and his subcontractor's plants) as may be necessary to determine conformance to contract requirements. In the event that it is in the best interest of the Government to authorize shipment before all Government procurement quality assurance actions can be taken at source, the contract shall be modified to the extent appropriate prior to shipment, if delivery is f.o.b. origin, (i) to make the delivery term f.o.b. destination or otherwise to make the contractor responsible for risk of loss or damage in transit, and (ii) where delivery remains f.o.b. origin, to require the contractor to reimburse the Government for the cost of shipping and other expenses incurred by the Government in the event of rejection at destination.

(d) If a contractor's purchase order or subcontract includes FMS requirements and "quality assurance only" is requested at source, the requesting CAO shall clearly indicate "FMS Requirement" on the face of the document and provide the FMS case identifier code, associated item quantity and related DoD prime contract number and contract line/subline item number. When more than one FMS case is involved, the information shall be provided for each.

14-305.3 ***Government Procurement Quality Assurance at Destination.***

(a) Government procurement quality assurance actions that can be performed at destination are normally limited to inspection of supplies. For many procurements, such inspection by the Government is sufficient. Supplies shall be inspected by the Government at destination when:

(i) they are purchased "off-the-shelf" and do not require technical inspection or no direct contract quality requirement is specified (14-101.5);

(ii) necessary testing equipment is located only at destination;

(iii) perishable subsistence supplies are purchased within the United States, except that perishable subsistence supplies destined for overseas shipment will normally be inspected for condition and quantity at points of embarkation;

(iv) brand name items are purchased for authorized resale, except that where supplies are destined for direct overseas shipment, inspection (and acceptance) will be made by the contracting officer or the official charged with such responsibility on the basis of a tally sheet evidencing receipt of shipment signed by the port transportation officer or other designated official at the transshipment point; or

(v) otherwise determined to be in the best interest of the Government.

(b) In no event shall a contract provide for Government inspection at a port of embarkation when the supplies are destined for overseas shipment, unless the contracting officer first determines that inspection functions can be provided at such destination. Similarly, overseas inspection shall not be required for supplies shipped from the United States except in unusual circumstances—as, for example, where inspection overseas is essential in conjunction with installation, operation, or other use of the supplies or equipment—and then only when the contracting officer first determines that inspection can be performed, or makes necessary arrangements for its performance, overseas.

14-306 Acceptance of Supplies or Services.

(a) Acceptance of supplies or services is the responsibility of the activity to which the function is assigned by the purchasing office. When a Government activity uses services of another Government activity or department for the purpose of acceptance, acceptance by the other activity or department is binding upon the activity for which the services are performed. Unless there are valid reasons to the contrary, acceptance shall be at origin (see 19-104).

(b) Depending upon the provisions of the contract, acceptance may be effected prior to, at the time of, or after delivery. Acceptance shall ordinarily be evidenced by execution of an acceptance certificate on the applicable inspection and receiving report form (DD Form 250, DD Form 1155, or Standard Form 44). When acceptance is accomplished at a point other than destination, supplies cannot be reinspected at destination for acceptance purposes. However, such supplies should be examined at destination for identity, damage in transit, quantity and condition.

(c) In certain instances where small losses would be incurred in the event of defects or where knowledge of the successful contractor's reputation or past performance provides assurance that the supplies would be replaced without contest, a Certificate of Conformance may be used as the sole basis for acceptance. To permit the Government this option, and at the discretion of the PCO, the Certificate of Conformance clause 7-104.100 may be inserted in solicitations and contracts requiring the contractor to certify that supplies comply with contract requirements. In no case shall the Government's right to inspect supplies under the inspection provisions of the contract be prejudiced.

14-307 Place of Acceptance.

Each contract shall specify the place of acceptance. A contract which provides for Government procurement quality assurance actions only at source shall ordinarily provide for acceptance at source. A contract which provides for performance of Government procurement quality assurance actions at destination shall ordinarily provide for acceptance at destination. Bulk petroleum contracts shall specify the point at which the Government takes title to the product.

14-308 Government Procurement Quality Assurance Actions on Small Purchases.

(a) In determining the type and extent of Government procurement quality assurance actions to be required on small purchases, the criticality of application of the item, the amount of possible losses, and the likelihood of uncontested replacement of defective supplies shall be considered.

(b) Government procurement quality assurance of small purchases shall be at destination, unless the provisions of 14-305.2(a) or (b) apply. Government procurement quality assurance actions shall be performed at source if defective supplies can harm personnel or equipment. In such case, one of the types of contract quality requirements described in 14-101 shall be included in the contract.

(c) Unless detailed Government procurement quality assurance actions are necessary, inspection of small purchases shall consist of examination of:

(i) type and kind;
(ii) quantity;
(iii) condition;
(iv) operability, if readily determinable; and
(v) preservation, packaging, packing and marking, if applicable.

PROCUREMENT QUALITY ASSURANCE

Part 4—Government Procurement Quality Assurance Actions

14-401 General. This Part sets forth policies and procedures for performance of Government procurement quality assurance actions by contract administration offices, designed to provide a systematic product-oriented plan, appropriate distribution of effort, and maintenance of suitable records.

14-402 Planning.

(a) Government procurement quality assurance actions to determine a contractor's compliance with contract quality requirements shall be systematically planned, taking into consideration the relative importance of the product and the variety of tasks required of the available resources. Systematic planning shall include:

- (i) review and analysis of pre-award surveys, post-award conferences, technical data packages, and first article approvals;
- (ii) identification of the specific products, processes and procedures to be subjected to Government procurement quality assurance as well as the specific characteristics of such products, processes, or procedures to be verified (in the absence of identification of specific characteristics by the purchasing office, those established by the contractor will be used to the maximum extent possible);
- (iii) provisions for effective distribution and utilization of the Government's efforts and resources between inspection of products and inspection of the contractor's methods of regulating quality; and
- (iv) provisions for keeping and using records.

(b) Planning to determine the extent of Government procurement quality assurance actions shall include as a minimum:

- (i) possible effect of failure on the health or safety of personnel, or on associated or related equipment;
- (ii) tactical, strategic, or technical importance;
- (iii) complexity and the need for required reliability;
- (iv) pertinency, completeness, and reliability of the contractor's quality records;
- (v) previous quality history of the contractor; and
- (vi) unit cost.

14-403 Implementation.

(a) Determination of conformance to contract quality requirements shall be made on the basis of objective evidence of quality. In determining the acceptability of supplies or services, the contract administration office shall make optimum use of quality data generated by contractors. To the extent that contractor quality data are available and reliable, as determined by the contract administration office, such data shall be used to adjust the amount of Government procurement quality assurance to a minimum consistent with proper assurance that the supplies or services accepted conform to contract quality requirements.

(b) When the contract requires the contractor to conduct particularly expensive tests involving destruction of supplies, extended periods of time for conducting the tests, or other factors contributing to high-testing costs, the tests shall be coordinated between the contractor and the Government to the maximum extent practicable to avoid the need for later independent Government examination and testing.

(c) The following basic actions shall be taken to determine the contractor's compliance with the contract quality requirements:

(i) review and evaluation of the contractor's inspection procedures;
(ii) review and evaluation of the contractor's selection, calibration, maintenance, and use of gauges and measuring and test equipment;
(iii) review and evaluation of the contractor's quality records; and
(iv) performance of product verification inspection by the Government.

(d) Because of configuration, innumerable design characteristics, and life and reliability requirements, the quality of complex supplies and equipment cannot be adequately evaluated by inspection only; such supplies and equipment must be produced under regulated conditions if adequate assurance of product quality is to be realized. Systematic control of manufacturing processes by the producer is an essential prerequisite for assuring the quality of such items. It is also essential that the Government verify systematically that such control is, in fact, established and maintained by contractors.

(e) The Government, under the *Inspection* clause in 7-103.5, reserves the right to charge to the contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the contractor or when reinspection or retest is necessitated by prior rejection. When a contract contains this clause, a record shall be maintained of the additional cost occasioned the Government by the delay, reinspection or retest. Such record shall include a description of any delay, the reasons for any reinspection or retest, and a statement of the hours spent by the Government, including wait time, as well as the cost of any applicable travel and transportation. When the Quality Assurance Representative considers that the circumstances warrant the assessment of the additional costs occasioned the Government by the delay, reinspection or retest, he shall forward his recommendation together with the record of additional costs to the contracting officer. If the contracting officer determines that such additional costs should be charged to the contractor, he shall notify the contractor, in writing, of his determination to exercise the Government's right under the Inspection clause and demand payment of such costs in accordance with the collection procedures established under Appendix E, Part 6. In arriving at any such recommendation and determination, consideration should be given to the frequency of such delay, reinspection or retest under both current and prior contracts; the cause of such delay, reinspection or retest; and the expense of recovering the additional costs. Charges for such delay, reinspection or retest normally should not be assessed when such delay, reinspection or retest occurs only occasionally, or results from causes beyond the contractor's control, or when the expense of recovery outweighs the costs to be recovered. Costs shall be determined at the standard DoD reimbursable rate in effect at the time of the delay, reinspection or retest.

14-404 Maintenance of Government Records. Suitable records shall be maintained by the contract administration office as part of the performance records of contractors in order to reflect:

- (i) the nature of all Government procurement quality assurance actions, including when appropriate the number of observations made and the number and type of deficiencies;
- (ii) decisions regarding the acceptability of the products, the processes, and the requirements, together with action taken to correct deficiencies; and
- (iii) distribution of Government procurement quality assurance effort.

14–405 Quality Evaluation Data. The contract administration office shall establish a system providing as a minimum for the collection, evaluation and, use of quality data developed (1) by the contractor during manufacture and (2) by the Government through procurement quality assurance actions and reports by users during initial use phase, where available. The objectives of the system are to:

- (i) provide a foundation for technical actions aimed at maintaining and making needed improvements in the quality characteristics of both current and future products (subject to military requirements and cost considerations);
- (ii) upgrade the methods and practices used to assure quality during manufacture, delivery, and use of the item;
- (iii) provide a basis for managerial decisions relative to the allocation of Government procurement quality assurance resources among different products and activities; and
- (iv) determine production source capabilities as measured by product quality.

14–406 Nonconforming Supplies and Services.

(a) It is the policy of the Government that supplies or services which do not conform in all respects to the contract requirements should be rejected. Ordinarily, they will be rejected when the failure to conform adversely affects one or more of the following major areas: (i) performance, (ii) durability, (iii) reliability, (iv) interchangeability, (v) effective use or operations, (vi) weight or appearance (where a factor), or (vii) health or safety. However, there may be circumstances (e.g., reasons of economy or urgency) when acceptance of such nonconforming supplies or services is in the interests of the Government. Except as provided in (d) below, final decision for acceptance shall be made by the procuring contracting officer based on information furnished by the contract administration office. The information shall be in writing except that in urgent cases it may be furnished orally and confirmed in writing. The information shall include:

- (i) information explaining in what respect the supplies or services fail to conform to the contract requirements;
- (ii) if feasible, a request from the contractor for acceptance of the supplies or services;
- (iii) reasons for recommending acceptance or rejection of the supplies or services offered; and
- (iv) if acceptance is recommended, what adjustment is deemed appropriate or has been offered by the contractor (if known).

The procuring contracting officer shall, in appropriate cases, obtain the concurrence of the military activity responsible for the technical requirements. In addition, where health factors are involved, concurrence shall also be obtained from the Surgeon General of the Military Department concerned.

(b) Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services if this can be done within the required delivery schedule. Unless the contract provides otherwise, such correction or replacement shall be made without additional cost to the Government. Paragraph (c) of the standard Inspection clause in 7-103.5(a) reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.

(c) Rejection of nonconforming supplies or services need not be in writing unless (i) the supplies have been rejected at a point other than the contractor's plant, (ii) the contractor persists in offering nonconforming supplies or services for acceptance, or (iii) delivery or performance was late without excusable cause. Any written notice of rejection shall state the reasons for rejection. It is important that a notice of rejection be furnished to the contractor promptly, because if timely notice of rejection is not furnished, acceptance may in certain cases be implied as a matter of law.

(d) When nonconformance of supplies or services is minor in that it does not affect (i) performance, (ii) durability, (iii) reliability, (iv) interchangeability, (v) effective use or operation, (vi) weight or appearance (where a factor), or (vii) health or safety, the contract administration office shall make the determination regarding the acceptance or rejection of such nonconforming supplies or services, except when authority to do so is withheld by the procuring contracting officer. The contract administration office may establish a joint contractor-contract administration office Material Review Board to assist in making this determination. Acceptance of nonconforming supplies which affect (i) performance, (ii) durability, (iii) reliability, (iv) interchangeability, (v) effective use or operation, (vi) weight or appearance (where a factor), or (vii) health or safety is outside the scope of Material Review Board disposition and must be handled as specified by 14-406(a).

(e) Each contract under which nonconforming supplies or services are accepted under (a) above shall be modified to provide for an equitable price reduction or other consideration. In the case of minor nonconformances, as discussed in (d) above, the contract shall not be modified, except when it appears to the contract administration office that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services exceed the administrative cost to the Government of processing a contract modification (normally $50), or the best interests of the Government otherwise require that the contract be modified.

(f) Repeated tender of nonconforming supplies or services, including those with only minor defects, should be discouraged by appropriate action such as rejecting the supplies or services whenever feasible and documenting the contractor's performance record.

14-407 Government Procurement Quality Assurance Actions at Subcontract Level.

14-407.1 *General.* Government procurement quality assurance actions at the subcontract level do not relieve the contractor of any of his responsibilities under the contract and do not establish any contractual relationship between the Government and the subcontractor. Such actions are to assist the contract administration office for the prime contract to determine that the prime contractor is assuring conformance of subcontracted supplies or services with contract requirements. When the Government elects to perform selected procurement quality assurance actions at the subcontract level, the prime contractor shall be requested to assure that appropriate Government access authority is provided.

14–407.2 *Conditions.* Government procurement quality assurance actions at the subcontract level shall be performed when:

(i) the item is to be shipped from the subcontractor's plant to the using activity;

(ii) the conditions for inspection at source established in 14–305.2(a) or (b) are applicable; or

(iii) the contract specifies that certain inspection is to be made by the Government, and such inspection can be performed only at the subcontractor's plant.

14–407.3 *Selective Evaluation at the Subcontract Level.* Selective evaluation of the contractor's control of his subcontractors may be requested by the contract administration office responsible for the contract in order to provide that office with additional assurance that supplies and services being received from subcontractors conform to quality requirements. Communications between contract administration offices concerning procurement quality assurance actions to be performed shall be through Government channels. Requests for selective evaluation shall indicate Government procurement quality actions to be performed, *e.g.*, specific characteristics, processes and procedures to be verified, tests to be witnessed, and records, reports, and certificates to be evaluated.

14-408 Inspection Stamping.

(a) There is one Department of Defense inspection approval marking design for identification of material which has been inspected for conformance to only a portion of the contract quality requirements, and another for material which has been completely inspected for all contract quality requirements at source. The designs and their uses are as follows:

(i) *Partial (Circle) Inspection Approval Stamp.* This stamp is circular and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has been subjected to only a portion of the contract quality requirements applicable to the material at the time and place of Government procurement quality assurance. Partial inspection approval stamping shall identify, for Government personnel, material which complies and all contract quality requirements applicable at the time and place of Government procurement quality assurance, excepting those listed as uninspected on the associated Material Inspection and Receiving Report (DD Form 250), packing list, or comparable document.

(ii) *Complete (Square) Inspection Approval Stamp.* This stamp is square and is used by or under the direct supervision of the Government representative to identify contract or subcontract material which has satisfied all contract quality requirements. Complete inspection approval stamping shall identify, for Government personnel, material which is in complete conformance with all contract quality requirements applicable to the material at the time and place of inspection. Complete inspection approval establishes that material which once was partially approved has subsequently received complete approval. One imprint of the square stamp will void multiple imprints of the circle stamp.

(b) The marking of each item is neither required nor prohibited. Ordinarily, the stamping of shipping containers, packing lists, or lot routing tickets adequately serves to provide the necessary indication status and to control or facilitate the movement of material. No material shall be stamped in such a way as to damage the material.

(c) The placing of a Department of Defense Inspection Approval Stamp upon material does not mean that the material has been accepted by the Government. Acceptance is ordinarily evidenced by execution of the acceptance certificate on the applicable inspection and receiving report.

(d) NASA Publications include detailed policies and procedures regarding the use of National Aeronautics and Space Administration (NASA) Quality Status Stamps. When requested by NASA Centers, the Government representative shall use NASA Quality Status Stamps and apply the procedures of current NASA requirements for all NASA delegations.

14-409 Authorizing Shipment of Supplies.

14-409.1 *General.* Ordinarily, a representative of the contract administration office shall sign or stamp the shipping papers accompanying Government source-inspected supplies of both prime contracts and subcontracts to release them for shipment. In accordance with the criteria in 14–409.2(a), however, an alternative procedure may be used in which the contractor assumes the responsibility for the release for shipment of such supplies inspected at his or his subcontractor's facilities, just as the contractor may be given the authority for other functions pertaining to the control of quality. When this alternative procedure is used, it will release Department of Defense manpower for technical functions by eliminating routine signing or stamping of the papers accompanying each shipment.

14–409.2 *Alternative Procedures—Contractor Release for Shipment.*

(a) The contract administration office may give the contractor authorization in writing to release supplies for shipment when:

(i) the stamping or signing of the shipping papers by a representative of the contract administration office impairs the operation of a planned Government procurement quality assurance program or places an unreasonable demand on the Government representative's time; and

(ii) there is sufficient continuity of production to permit the establishment of a systematic and continuing Government evaluation of the contractor's control of quality; and

(iii) the contractor has a record of satisfactory product quality including quality pertaining to preparation for shipment.

(b) When there is an indication that the conditions in (a)(ii) or (iii) above no longer prevail, the authorization shall be withdrawn in writing.

(c) When the alternative procedure is used, the contractor shall:

(i) type or stamp, and sign, the following statement on the required copy or copies of the shipping paper(s) or on an attachment thereto—

> The supplies comprising this shipment have been subjected to and have passed all examinations and tests required by the contract, were shipped in accordance with authorized shipping instructions, and conform to the quality, identity and condition called for in contractual requirements and to the quantity shown on this document. This shipment was released in accordance with paragraph 14-409 of the Armed Services Procurement Regulation for Authorizing Shipment of Supplies under authorization of (*Name and Title of the authorized representative of the Contract Administration Office*) in a letter dated (*Date of authorizing letter*).
>
> (*Signature and Title of Contractor's designated representative*)

and

(ii) release shipment and process, in accordance with established instructions, the DD Form 250 (Material Inspection and Receiving Report) or any other receiving report authorized by this Regulation.

Part 5—Contract Administration of Special Commodities

14–501 General. Special commodities are those that are subject to statutory requirements, support agreements with other than Department of Defense activities, or specific Office of Secretary of Defense policy guidance.

14–502 Subsistence.

(a) Any Federal activity capable of assuring wholesomeness and quality in food, including medical service personnel of the Military Departments, may be designated by the purchasing office to perform Government procurement quality assurance actions on a reimbursable basis when appropriate, for subsistence contract items.

(b) The following is an explanation of particular terms used in this Part:

(i) *Subsistence*—food for, and provisions to be used in, feeding of personnel and animals;

(ii) *Medical Service Personnel*—officers and enlisted personnel of the Medical Services of the Departments of the Army, Navy, and Air Force designated to perform the required inspections of subsistence;

(iii) *Wholesomeness of Food*—that characteristic possessed by a food product which promotes good health and well being in the consumer; and

(iv) *Quality of Food*—the required elements or characteristics stated in the specification or other contractual document which the food must possess to comply with the desired degree of excellence exclusive of those characteristics required to assure wholesomeness.

(c) The Surgeons General of the Military Departments are responsible for the acceptance criteria, technical requirements, and inspection procedures needed to assure wholesomeness of foods. Wholesomeness assurance measures will include but not be limited to:

(i) establishment of standards or tolerances to evaluate wholesomeness from a microbiological, toxicological, and radiological viewpoint;

(ii) inspection of sources for sanitation including sources of component items when required;

(iii) approval of manufacturing processes to assure that technical procedures required to assure wholesomeness are incorporated and used; and

(iv) use of test and examination techniques during processing or for the finished item to detect insanitary practices or unwholesome food.

(d) Maximum utilization shall be made of existing inspection and grading services of other Federal agencies to perform procurement quality assurance actions in processing plants economically and efficiently. However, an adequate Government procurement quality assurance workload shall be retained for training of medical service personnel and to provide a base for rotation of personnel between the continental United States and overseas.

14–503 Petroleum. The contract administration office may authorize the release of petroleum supplies without requiring the signing or stamping of shipping papers by a representative of the contract administration office, if the alternative procedures of 14–409.2 are used. In that event on petroleum servicing contracts for receiving, storing, and issuing Government-owned petroleum products, the contractor shall be required to type or stamp and to sign the following statement on each copy of the shipping papers.

> I certify that the above supplies were (a) in the quantity indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 14–503 of the Armed Services Procurement Regulation under authorization of (*Name and title of the authorized representative of the Contract Administration Office*) in a letter dated (*Date of authorizing letter*).
>
> (*Signature and Title of Contractor's designated Representative*)

14–504 Construction Projects.

(a) On-site inspection of buildings and other structures is normally performed by the Military Department responsible for their construction.

(b) Government procurement quality assurance actions for construction materials and supplies acquired for military and civil works projects shall be performed by the contract administration office in accordance with this Section.

(c) The functions in (a) and (b) above will be performed so as to assure compatibility of buildings and structures and installed equipment.

Part 6—Other Agencies, Governments and Organizations

14-601 General. Except for the special quality assurance provisions below concerning the Federal Aviation Administration and NATO, performance of government procurement quality assurance and other contract administration services for and by other government agencies, foreign governments and international organizations is in accordance with Section XX, Parts 5 and 6.

14-602 Federal Aviation Administration. Under Public Law 85-726 (72 Stat. 776, 49 U.S.C. 1423), the Federal Aviation Administration (FAA) has certain responsibilities and prerogatives in connection with the issuance and continuation of various certificates applicable to the design, manufacture, and airworthiness criteria of certain types of commercial aircraft and of aircraft equipment and accessories. The FAA evaluations are not a substitute for normal Department of Defense evaluations of the contractor's quality assurance measures. Actual records of such FAA evaluations may be of benefit, however, and should be utilized to maximum advantage by the contract administration office. That office is responsible for assuring that the supplies and services conform to the terms of the contract and that any required certificates and approvals are in the possession of the contractor prior to acceptance.

14-603 Quality Assurance Among NATO Countries. The NATO Standardization Agreements (STANAG) 4107—Mutual Acceptance of Government Quality Assurance sets forth procedures, terms and conditions under which mutual government quality assurance of military material and services is to be performed by the national authority of one NATO country on request of another NATO country, or a NATO organization. This agreement, with certain reservations, has been ratified by the United States and other nations in the North Atlantic Treaty Organization. The Military Departments may request NATO countries to perform quality assurance in accordance with STANAG 4107. They will also perform quality assurance in accordance with STANAG 4107, if requested. As a reservation to STANAG 4107, the U.S. Government requires reimbursement for work performed for other NATO countries. Paragraph 20-506 applies.

14-603.1 *NATO Quality Control System Requirements for Industry.* The NATO Standardization Agreement (STANAG) 4108—NATO Quality Control System Requirements for Industry AQAP-1 sets forth details of an agreement among NATO Nations with an objective to standardize the application of Allied Quality Assurance Publication No. 1 (AQAP-1). In accordance with STANAG 4108 participants agree to:

(i) encourage suppliers of defense materiel and services to establish Quality Control Systems in accordance with the principles outlined in AQAP-1;

(ii) consider compliance with AQAP-1 a basic factor when selecting suppliers of defense materiel in NATO cooperative projects;

(iii) use AQAP-1 as a guide for evaluating a supplier's Quality Control System when so requested by another NATO country, which is considering placing a contract with that supplier.

This agreement has been ratified by the United States and other nations in NATO. The Military Departments may request NATO Nations to assure compliance with AQAP-1 in the performance of quality assurance in accordance with STANAG 4107. They will also assure compliance with AQAP-1 when so requested by a participating NATO Nation.

14-603.2 *NATO Quality Assurance Handbook AQAP-2*. NATO Quality Control System Requirements for Industry (AQAP-1) establishes requirements for a contractor's quality control system (14-603.1). AQAP-2, Guide for Evaluation of a Contractor's Quality Control System for Compliance with AQAP-1, has been prepared to assist Quality Assurance Representatives of NATO Countries to administer the provisions of AQAP-1. AQAP-2 is not to be incorporated into contracts, but is to be used as guidance to Government Quality Assurance personnel when performing quality assurance for NATO Countries in accordance with STANAG 4107 to insure contractor's conformance to AQAP-1.

SECTION XV CONTRACT COST PRINCIPLES AND PROCEDURES

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SECTION XV

CONTRACT COST PRINCIPLES AND PROCEDURES

15-000 Scope of Section. This Section contains general cost principles and procedures for the pricing of contracts and contract modifications whenever cost analysis is performed (see 3-807.2), and for the determination, negotiation, or allowance of costs when such action is required by a contract clause.

CONTRACT COST PRINCIPLES AND PROCEDURES

Part 1—Applicability

15-101 Scope of Part. This Part describes the applicability of succeeding Parts of this Section to the various types of contracts in connection with which cost principles and procedures are used.

15-102 Negotiated Supply, Service, Experimental, Developmental, and Research Contracts, and Contract Changes With Commercial Organizations. This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated on the basis of cost with organizations other than educational institutions (see 15-103) and State and local governments (see 15-108). It does not include facilities contracts (see 15-105) and construction contracts (see 15-104). The cost principles and procedures set forth in Part 2 of this Section shall be used in the pricing of negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is to be performed pursuant to 3-807.2. In addition, the cost principles and procedures set forth in Part 2 of this Section shall be incorporated by reference in such contracts as the basis—

(i) for determination of reimbursable costs under cost reimbursement type contracts (3-405) including cost reimbursement type subcontracts thereunder, and the cost reimbursement portion of time-and-materials contracts (3-406.1) except in such contracts where material is priced on a basis other than at cost in accordance with 3-406.1(d);
(ii) for the negotiation of overhead rates (Section III, Part 7);
(iii) for claiming, negotiating, or determining costs under terminated fixed price and cost reimbursement type contracts (8-204 and 8-214);
(iv) for the price revision of fixed price incentive contracts (3-404.4);
(v) for price redetermination of prospective and retroactive price redetermination contracts (3-404.5 and 3-404.6); and
(vi) for pricing changes and other contract modifications (see 7-103.26).

15-103 Contracts With Educational Institutions. This category includes all contracts and contract modifications for experimental, developmental, or research work with educational institutions. The cost principles and procedures set forth in Part 3 of this Section shall be incorporated by reference in cost reimbursement research contracts with educational institutions as the basis—

(i) for determination of reimbursable costs under cost reimbursement type contracts, including cost reimbursement type subcontracts thereunder;
(ii) for the negotiation of overhead rates (Section III, Part 7); and
(iii) for the determination of costs of terminated cost reimbursement type contracts where the contractor elects to "voucher out" his costs (Section VIII, Part 4), and for settlement of such contracts by determination (8-210.7).

In addition, Part 3 is to be used in determining the allowable costs of research and development performed by educational institutions under grants as a guide in the evaluation of costs in connection with the negotiation of fixed price type contracts and termination settlements.

15–104 Construction Contracts. This category includes all contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It also includes contracts for architect-engineer services related to such construction. It does not include contracts for vessels, aircraft, or other kinds of personal property. The cost principles and procedures set forth in Part 4 of this Section shall be used in the pricing of negotiated construction contracts and contract modifications with concerns other than educational institutions whenever cost analysis is to be performed pursuant to 3–807.2. In addition, the cost principles and procedures set forth in Part 4 of this Section shall be incorporated by reference in cost reimbursement and fixed price type construction contracts as the basis—

(i) for determination of reimbursable costs under cost reimbursement type contracts, including cost reimbursement type subcontracts thereunder (3–405);

(ii) for the negotiation of overhead rates (Section III, Part 7);

(iii) for claiming, negotiating, or determining costs under terminated fixed price and cost reimbursement type contracts (8–204 and 8–214);

(iv) for the price revision of fixed price incentive contracts (3–404.4); and

(v) for pricing changes and other contract modifications (see 7–103.26).

15–105 Facilities Contracts. Part 5 of this Section contains principles and procedures for the evaluation and determination of costs under facilities contracts (13–101.11) and subcontracts thereunder. Such principles and procedures shall be incorporated by reference in facilities contracts as the basis—

(i) for determination of reimbursable costs under facilities contracts including cost-reimbursement type subcontracts thereunder;

(ii) for the negotiation of overhead rates (Section III, Part 7); and

(iii) for the determination of costs of terminated facilities contracts where the contractor elects to "voucher out" his cost (Section VIII, Part 4), and for settlement of such contracts by determination (8–210.7).

15–106 Fixed Price Type Contracts. This Section shall be used in the pricing of fixed price type contracts and contract modifications whenever cost analysis is performed. It also will be used whenever a fixed price type contract clause requires the determination or negotiation of costs. However, application of these cost principles to fixed price type contracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of these cost principles, the objective will continue to be negotiate prices that are fair and reasonable, cost and other factors considered.

15–107 Advance Agreements on Particular Cost Items.

(a) The extent of allowability of the selected items of cost covered in Parts 2 through 5 has been stated to apply broadly to many accounting systems in varying contract situations. Thus, as to any given contract, the reasonableness and allocability of certain items of cost may be difficult to determine, particularly in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is desirable that contractors seek advance agreement with the Government as to the treatment to be accorded those special or unusual costs. Such agreements may also be initiated by the Government. Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the cost covered by the agreement. Any such agreement must be in writing, shall be executed by both contracting parties, and shall be incorporated in the present and future contracts to which it is applicable.

(b) The contracting officer is not authorized by this paragraph to agree to a treatment of costs inconsistent with Parts 2 through 5. For example, an advance agreement may not provide that, notwithstanding 15-205.17, interest shall be allowable.

(c) An advance agreement entered into in accordance with this paragraph shall contain a suitable statement of its intended applicability and duration. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

(d) Advance agreements may be negotiated to affect only a single contract, a group of contracts, or may be broad enough to affect all the contracts of a procuring activity, an agency, or the entire Department of Defense. An advance agreement which affects only one contract, or class of contract from a single buying office, shall be negotiated by the procuring contracting officer (PCO), his authorized representative, or an ACO when delegated this authority by the PCO. The proposed agreement shall be coordinated between the ACO and the PCO prior to execution.

(e) Advance agreements, other than those negotiated by the PCO in accordance with (d) above, shall be negotiated by the cognizant ACO or the assigned Corporate Administrative Contracting Officer (CACO) (see 20-900) except when this responsibility is currently assigned in the master list published annually in a Defense Procurement Circular for Tri-Service Departmental negotiation. Agreements at corporate level with contractors other than those assigned for Tri-Service negotiations, and for which a CACO has not been established, shall be negotiated by an ACO determined by majority vote among the Departments concerned in general accordance with the procedures set forth in 20-903(b).

(f) Prior to undertaking negotiation of an advance agreement under (e) above, the cognizant negotiator shall (i) determine whether there are other DoD or non-DoD departments or agencies that have a significant unliquidated dollar balance in contracts with the same contractor, (ii) inform any such department or agency of the cost item(s) or other matters to be negotiated, and (iii) invite the department or agency to participate in pre-negotiation discussions, or in the subsequent negotiations as appropriate. The results of the negotiation will be binding upon all departments. At the completion of the negotiation, the sponsor will prepare and distribute copies of the fully executed agreement to the departments' procuring activities and Defense Contract Audit Agency.

(g) Examples of cost on which advance agreements may be particularly important are:

- (i) compensation for personal services including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay and cost of living differential;
- (ii) use charge for fully depreciated assets;
- (iii) deferred maintenance costs;
- (iv) precontract costs;
- (v) independent research and development costs;
- (vi) royalties;
- (vii) selling and distribution costs;
- (viii) travel costs, as related to special or mass personnel movements;
- (ix) idle facilities and idle capacity;
- (x) automatic data processing equipment;
- (xi) bid and proposal costs; and
- (xii) severance pay to employees on support service contracts.

15-108 Grants and Contracts With State and Local Governments. Part 7 of this Section provides principles and standards for determining costs applicable to grants and contracts with State and local governments. They are designed to provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between grantees and the Government. These cost principles apply to all programs that involve grants and contracts with State and local governments. They do not apply to grants and contracts with:

- (i) publicly financed educational institutions subject to Part 3 of this Section; or
- (ii) publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies. Any other exceptions will be approved by the Bureau of the Budget in particular cases when adequate justification is presented.

15-109 Definitions. As used in this Section XV (except for Part 3), the words and phrases defined in this paragraph shall have the meanings set forth below.

(a) *Profit Center* - The smallest organizationally independent segment of a company which has been charged by management with profit and loss responsibilities.

(b) *Accumulating Costs* - The collecting of cost data in an organized manner, such as through a system of accounts.

(c) *Actual Costs* - Amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Includes standard costs properly adjusted for applicable variances.

(d) *Allocate* - To assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

(e) *Cost Objective* - A function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

(f) *Direct Cost* - Any cost which is identified specifically with a particular final cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

(g) *Estimating Costs* - The process of forecasting a future result in terms of cost, based upon information available at the time.

(h) *Final Cost Objective* - A cost objective which has allocated to it both direct and indirect costs, and, in the contractor's accumulation system, is one of the final accumulation points.

(i) *Indirect Cost* - Any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

(j) *Indirect Cost Pools* - Groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

(k) *Pricing* - The process of establishing the amount or amounts to be paid in return for goods or services.

(l) *Proposal* - Any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement, or for securing payments thereunder.

(m) *Reporting Costs* - Provision of cost information to others. The reporting of costs involves selecting relevant cost data and presenting it in an intelligible manner for use by the recipient.

CONTRACT COST PRINCIPLES AND PROCEDURES

Part 2—Contracts with Commercial Organizations

15-201 Basic Considerations.

15-201.1 *Composition of Total Cost.* The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is equitable under the circumstances may be used, including standard costs properly adjusted for applicable variances.

15-201.2 *Factors Affecting Allowability of Costs.* Factors to be considered in determining the allowability of individual items of cost include (i) reasonableness, (ii) allocability, (iii) standards promulgated by the Cost Accounting Standards Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances, and (iv) any limitations or exclusions set forth in this Part 2, or otherwise included in the contract as to types or amounts of cost items. (But see 15-201.3(b)(4).) When a contractor has disclosed his accounting practices in accordance with Cost Accounting Standards Board Rules, Regulations, and Standards and any such practices are inconsistent with any of the provisions of this Part 2, costs resulting from such inconsistent practices shall not be allowed in excess of the amount that would have resulted from the use of practices consistent with this Part 2.

15-201.3 *Definition of Reasonableness.*

(a) *General.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to—

(i) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(ii) the restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(iii) the action that a prudent business man would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government and the public at large; and

(iv) significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

(b) *Application of "Contractor Weighted Average Share in Cost Risk" (CWAS).*

(1) Except as provided in (2) and (3) below, to the extent that the allowability of an indirect cost is based on reasonableness of the nature and amount, the reasonableness shall be determined by reliance upon the approved "contractor

weighted average share in cost risk" (CWAS) (see Section III, Part 10, for the definition of CWAS), computed from data of the year in which the cost was incurred, as follows:

(i) if the profit center within which the cost was incurred has a CWAS rating of 65 points or higher, 35 points or more of which rating were derived from competitive firm fixed-price contracts or commercial sales, the reasonableness of the cost will not be questioned (but see 3–1004(b)); but

(ii) if the profit center within which the cost was incurred has a CWAS rating of 50 or higher but less than 65, the provisions of (i) above may be applied at the discretion of the administrative contracting officer.

(2) The cost principles contained in 15–205, or in certain cases their subparagraphs, carry either a "(CWAS)" or a "(CWAS-NA)" indicator. Those cost principles or subparagraphs subject to CWAS are preceded by the indicator "(CWAS)" and those to which CWAS is not applicable are preceded by the indicator "(CWAS-NA)". In all cases where cost reasonableness is not determined under CWAS because of its express inapplicability, the determination will be made in accordance with (a) above.

(3) The determination of cost reasonableness will be made in accordance with (a) above in all cases where the contractor could not qualify or does not choose to qualify under CWAS.

(4) The application of the CWAS applicable principles in 15–205 to indirect costs incurred in a profit center with an approved CWAS rating shall be determined in accordance with this subparagraph. Such costs shall be considered reasonable as to nature and amount, notwithstanding any specific limitations or exclusions based on standards of reasonableness contained in 15–205. For example, compensation for personal services (15–205.6(a)) shall be considered reasonable without regard to compensation paid by other firms (15–205.6(a)(2)). In addition, there are costs that are considered unallowable under 15–205 because they exceed a stated criteria of reasonableness. These criteria do not apply to indirect costs incurred in a profit center with an approved CWAS rating and the reasonableness of such costs shall not be questioned. For example, losses from a contractor's food and dormitory operations would be allowable notwithstanding the criteria in 15–205.10(c), or costs of idle facilities would be allowable notwithstanding the requirements of 15–205.12(b). Similarly, specific cost limitations, such as the 30–day limitation on advance trip time for relocated employees (15–205.25(c)(i)) or the 156–hour limitation for compensation for part time training (15–205.44(b)(v)) shall not apply to cost incurred in a profit center with an approved CWAS rating. Also, any requirement in 15–205 for contracting officer approval or instructions as a prerequisite to the allowability of certain cost (*e.g.*, 15–205.22(e)(2)) shall not apply.

(5) Questions involving the charging off of assets or setting up of other than normal year-end accruals or reserves will be considered to be questions of allocability or accounting practices rather than reasonableness.

(6) If the profit center incurs costs (*e.g.*, travel, relocation, personnel compensation) on the basis of prescribed corporate-wide policy uniformly applied to

all profit centers, consideration should be given to the corporate CWAS in determining the reasonableness of such locally incurred costs.

(7) The CWAS rating for the company shall be used in testing the reasonableness of corporate type expenses which are allocated to the profit centers. If the contractor has intermediate management organizations, such as Groups, he shall develop a CWAS rating for such intermediate management organizations, which rating shall be applicable to the expenses allocated by such intermediate organizations to the profit centers.

(8) Indirect costs incurred in cost centers which are applied to specific contracts without relation to total profit center operations may be eliminated by the ACO from the application of CWAS.

15-201.4 *Definition of Allocability.* A cost is allocable if it is assignable or chargeable to one or more cost objectives (see 15-109(e)) in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it:

- (i) is incurred specifically for the contract;
- (ii) benefits both the contract and other work, or both Government work and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- (iii) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

15-201.5 *Credits.* The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the contractor, shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

15-201.6 *Accounting for Unallowable Costs.* The provisions of CAS 405, 'Accounting for Unallowable Costs', are incorporated herein in their entirety and are applicable to all contracts to which this Part 2 applies.

15-202 Direct Costs.

(a) A direct cost is any cost which can be identified specifically with a particular final cost objective. (See 15-109(f).) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives, provided that such treatment produces results which are substantially the same as the results which would have been obtained if such costs had been treated as a direct cost.

15-203 Indirect Costs.

(a) An indirect cost (see 15-109(i)) is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Any direct cost of minor dollar amount may be treated as an indirect cost for reasons of practicality under the circumstances set forth in 15-202(b). After direct costs have been determined and charged directly to the contract or other work as appropriate, indirect costs are those remaining to be allocated to the several cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative expenses are separately grouped. Similarly, the particular case may require subdivisions of these groupings, *e.g.*, building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(c) Each cost grouping shall be distributed to the appropriate cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. This principle for selection is not to be applied so rigidly as to complicate unduly the allocation where substantially the same results are achieved through less precise methods. Once an appropriate base for the distribution of indirect costs has been accepted, such base shall not be fragmented by the removal of individual elements. Consequently, all items properly includable in an indirect cost base should bear a pro-rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, where a cost input base is used for the distribution of G&A, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro-rata share of G&A costs.

(d) The method of allocation of indirect costs must be based on the particular circumstances involved. The method shall be in accordance with Standards promulgated by the Cost Accounting Standards Board, if applicable to the contract. Otherwise, the method shall be in accordance with generally accepted accounting principles. When Cost Accounting Standards Board Standards are not applicable to the contract, the contractor's established practices, if in accordance with generally acceptable accounting principles, shall generally be acceptable. However, the method used by the contractor may require examination when:

(i) any substantial difference occurs between the cost patterns of work under the contract and other work of the contractor;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, the inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(iii) indirect cost groupings developed for a contractor's primary location are applied to off-site locations. Separate cost groupings for costs allocable to off-site locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(e) A base period for allocation of indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance set forth in Part 406 (Cost Accounting Standard 406, Cost Accounting Period) of Appendix O, for selection of the cost accounting periods to be used for allocation of indirect costs, are incorporated in their entirety for application to CAS covered contracts. For contractors not having contracts subject to the Cost Accounting Standards, however, use of a period shorter than the contractor's fiscal year may be appropriate (i) for contracts for which performance involves only a minor portion of the fiscal year, or (ii) where it is general practice in the industry to use a shorter period. In any event, the base period or periods used shall avoid creating inequities in the allocation of indirect costs. When a contract is performed over an extended period, as many base periods will be used as are required to represent the period of contract performance.

(f) Special care should be exercised in applying the principles in (b), (c), and (d) above when Government-owned contractor operated (GOCO) plants are involved. The distribution of corporate, division or branch office general and administration expenses to such plants when they operate with little or no dependence on corporate administrative activities, may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

15-204 Application of Principles and Procedures.

(a) Deviations from the cost principles in this Part 2 shall be processed in accordance with the procedures in 1-109.3.

(b) Costs shall be allowed to the extent that they are reasonable (see 15-201.3), allocable (see 15-201.4), and determined to be allowable in view of the other factors set forth in 15-201.2 and 15-205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(c) Costs incurred as reimbursements or payments to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier above the first firm fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions are allowable to the extent that allowance is consistent with the Part of this Section XV which is appropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this Part 2 were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if Part 4 of this Section XV were incorporated in the subcontract. Similarly, costs incurred as payments under firm fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed pursuant to 3-807.10(b), shall be allowable only to the extent that the price was negotiated in accordance with the principles in 15-106.

(d) Selected items of cost are treated in 15-205. However, 15-205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in 15-205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this Part and, where appropriate, the treatment of similar or related selected items.

15-205 Selected Costs.

15-205.1 *Advertising Costs.*

(a) *Definition.* Advertising costs mean the costs of media advertising and directly associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, trade papers, outdoor advertising, dealer cards and window displays, conventions, exhibits, free goods and samples, and the like.

(b) (CWAS) The only advertising costs allowable are those which are solely for (i) recruitment of personnel required for the performance by the contractor of obligations arising under the contract, when considered in conjunction with all other recruitment costs, as set forth in 15-205.33, (ii) the procurement of scarce items for the performance of the contract, or (iii) the disposal of scrap or surplus materials acquired in the performance of the contract. Costs of this nature, if incurred for more than one defense contract or for both defense work and other work of the contractor, are allowable to the extent that the principles in 15-201.3, 15-201.4, and 15-203 are observed.

(c) (CWAS-NA) Advertising costs other than those specified in (b) above are not allowable. Unallowable advertising costs include those related to sales promotion. Such advertising involves direct payment for the use of time or space to promote the sale of products, either directly by stimulating interest in a product or product line, or indirectly by disseminating messages calling favorable attention to the advertiser for purposes of enhancing his overall image to sell his products. In both instances, the advertiser has control over the form and content of what will appear, the medium in which it will appear, and when it will appear.

15-205.2 *Bad Debts.* (CWAS-NA) Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related collections costs, and related legal costs, are unallowable.

15-205.3 *Bid and Proposal Costs.*

(a) *Definitions.*

(1) *Bid and proposal (B&P) costs* are the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts which fall within the following:

(A) *Administrative costs* including the cost of the nontechnical effort for the physical preparation of the technical proposal documents and also the cost of the technical and nontechnical effort for the preparation and publication of the cost data and other administrative data necessary to support the contractor's bids and proposals, and

(B) *Technical costs* incurred to specifically support a contractor's bid or proposal, including the costs of system and concept formulation studies and the development of engineering and production engineering data.

(2) *Company* as used in this paragraph includes all divisions, subsidiaries, and affiliates of the contractor under common control.

(b) *Composition of Costs.* B&P costs shall include not only all direct costs but also all allocable indirect costs except that general and administrative (G&A) costs shall not be considered allocable to B&P. Both direct and indirect costs shall be determined on the same basis as if each B&P project were under contract.

(c) *Allocation.* As a general rule, B&P costs shall be allocated to contracts on the same basis as the general and administrative expense grouping of the profit center (see 3-1003.3) in which such costs are incurred. However, where B&P

costs clearly benefit other profit centers, or the entire company, such costs shall be allocated through the G&A of such other profit centers or through the corporate G&A, as appropriate. In those instances when allocation of B&P through the G&A base does not provide equitable cost allocation, the contracting officer may approve use of a different base. Where allowable B&P is established by advance agreement pursuant to (d)(2)(A) below, the advance agreement shall specify the allocation procedures.

(d) *Allowability*.

(1) B&P administrative costs, when not separately identified and classified as B&P costs in accordance with the contractor's normal accounting practice, are allowable in accordance with the general principles of this Part 2 and are not subject to (2) (A) and (B) below.

(2) All other B&P costs (including all technical costs and any administrative costs separately identified and classified as B&P costs in accordance with the contractor's normal accounting practice) are allowable only in accordance with the following (but see 6-1304.3(a)(iv) and 6-1304.3(c)):

(A) *Companies Required to Negotiate Advance Agreements (CWAS-NA)*

(i) Any company which received payments, either as a prime contractor or subcontractor, in excess of $2 million from the DoD for IR&D and B&P in a fiscal year, is required to negotiate an advance agreement with the Government which establishes a ceiling for allowability of B&P costs for the following fiscal year. Computation of the amount of IR&D and B&P costs to determine whether the $2 million criterion was reached will include only those recoverable IR&D and B&P costs allocated during the company's previous fiscal year to all DoD prime contracts and subcontracts for which the submission and certification of cost or pricing data was required in accordance with Section 2306(f) of Title 10, United States Code. The computation shall include full burdening in the same manner as if the IR&D and B&P projects were contracted for except that G&A will not be applied.

(ii) When a company meets the criterion in (i) above, required advance agreements may be negotiated at the corporate level and/or with those profit centers (see 3-1003.3) which contract directly with the DoD and which in the preceding year allocated recoverable IR&D and B&P costs in excess of $250,000 including burdening as in (i) above, to DoD contracts and subcontracts for which the submission and certification of cost or pricing data was required in accordance with Section 2306(f) of Title 10, United States Code. When ceilings are negotiated for separate profit centers of the company, the allowability of B&P costs for any center which, in its previous fiscal year, allocated less than $250,000 of IR&D and B&P costs to such DoDcontracts and subcontracts may be determined in accordance with (B) below.

(iii) Companies which meet the threshold in (i) above shall submit information to support their proposed B&P program in accordance with guidance furnished by the cognizant Tri-Service Departmental Office.

(iv) Ceilings are the maximum dollar amounts of total costs for B&P work that will be allowable for allocation to all work of that part of the company's operation covered by an advance agreement. Within the ceiling limitations contractors will not be required to share B&P costs. In negotiating a ceiling, in addition to other considerations, particular attention must be paid to such factors as:
  A. The determination of the potential relationship of B&P projects to a military function or operation (see (v) below).
  B. Comparison with previous year's programs including the level of the Government's participation.
  C. Changes in the company business activities.
  D. The extent to which the contractor's B&P program is well planned and managed.

(v) The total amount of B&P costs allocated to DoD contracts pursuant to this subparagraph (A) shall not exceed the total of expenditures for B&P projects with a potential relationship to a military function or operation. For contracts which do not provide for cost determinations on a historical basis, this requirement will be considered to have been met if the estimated B&P costs allocated to the contract do not exceed its proportionate share of the total estimated costs of B&P with a potential relationship to a military function or operation. B&P costs will be considered to satisfy the potential relationship requirement when the contractor can demonstrate that the effort under a proposed contract or grant would have a potential relationship to a military function or operation. The potential relationship of B&P will be determined by the contracting officer, and he will make the results of his determination available to the contractor.

(vi) No B&P costs shall be allowable if a company fails to initiate negotiations of a required advance agreement prior to the end of the fiscal year for which the agreement is required.

(vii) When negotiations are held with a company meeting the $2 million criterion or with separate profit centers (when negotiations are held at that level under (ii) above) and an advance agreement is not reached, payment for B&P costs is required to be reduced substantially below that which the company or profit center would otherwise have received. The amount of such reduced payment shall not exceed 75% of the amount which, in the opinion of the contracting officer, the company or profit center would be entitled to receive under an advance agreement. Written notification of the contracting officer's determination of a reduced amount shall be provided the contractor. In the event that an advance agreement is not reached prior to the end of the contractor's fiscal year for which such agreement is to apply, negotiations shall immediately be terminated and the contracting officer's determination of the reduced amount shall be furnished.

(viii) Contractors may appeal decisions of the contracting officer to reduce payments. Such appeal shall be filed with the contracting officer within 30 days of receipt of a decision. For the purpose of hearing and deciding such appeals, each Department will establish an appeals hearing group consisting of the following:

A. A representative to be designated by the Assistant Secretary (Installations and Logistics) or the Director, DSA, who shall be Chairman;

B. A representative to be designated by the Assistant Secretary (Research and Development), or ODDR&E in the case of DSA; and

C. A representative to be designated by the General Counsel, Judge Advocate General of the Department, or Counsel of DSA. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense.

(ix) Advance agreements negotiated shall include at least the following:

A. A separate dollar ceiling for B&P. However, provision shall be made permitting the company to recover costs for B&P above the negotiated ceiling, provided that recovery of IR&D costs (see 15-205.35) covered by the same agreement is decreased below its ceiling by a like amount.

B. A provision stating how B&P costs are to be allocated (see (c) above).

C. A statement that the costs for B&P work recoverable under contracts citing DoD funds subject to Section 203, P.L. 91-441 limitations shall not exceed (i) such contracts' allocable share of the ceiling, and (ii) the total costs of the contractor's B&P determined to have a potential relationship to a military function or operation.

D. A statement that estimated costs or actual costs incurred, as appropriate, not in excess of the ceilings negotiated shall be used in the pricing of all contractual actions when negotiations are based on elements of cost and in final price determinations.

(x) Prior to the execution of an advance agreement, the B&P factor to be used for forward pricing and interim billing will be developed by and obtained from the cognizant central office of the Department responsible for negotiating B&P advance agreements. The B&P factor shall exclude estimated or actual costs for projects considered unrelated to a military function or operation.

(B) *Companies Not Required to Negotiate Advance Agreements (CWAS)*. Allowable B&P costs for companies not required to negotiate advance agreements in accordance with (A) above shall be established by a formula, either on a company-wide basis or by profit centers, computed as follows:

(i) Determine the ratio of B&P costs to total sales (or other base acceptable to the contracting officer) for each of the preceding three years and average the two highest of these ratios; this average is the B&P historical ratio;

(ii) Compute the average annual B&P costs (hereafter called average), using the two highest of the preceding three years;

(iii) B&P costs for the center for the current year which are not in excess of the product of the center's actual total sales (or other accepted base) for the current year and the B&P historical ratio computed under (i) above (hereafter called product) shall be considered allowable only to the extent the product does not exceed 120% of the average. If the product is less than 80% of the average, costs up to 80% of the average shall be allowable.

(iv) Costs which are in excess of the ceiling computed in (iii) above are not allowable except where the ceiling computed for IR&D cost under 15-205.35 is reduced in an amount identical to the amount of any increase over the B&P ceiling computed in (iii) above.

However, at the discretion of the contracting officer, an advance agreement may be negotiated when the contractor can demonstrate that the formula would produce a clearly inequitable cost recovery. The requirements of (d)(2)(A) above are not mandatory for such agreements.

15-205.4 *Bonding Costs.* (CWAS)

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of his business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

15-205.5 *Civil Defense Costs.*

(a) (CWAS) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the contractor's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the contractor.

(b) (CWAS) Costs of capital assets under (a) above are allowable through depreciation in accordance with 15-205.9.

(c) (CWAS-NA) Contributions to local civil defense funds and projects are unallowable.

15-205.6 *Compensation for Personal Services.*

(a) *General.*

(1) (CWAS) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or

deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided in 15-205.6(f)). It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, contributions to pension, annuity, and management employee incentive compensation plans, allowances for off-site pay, incentive pay, location allowances, hardship pay and cost of living differential. When the personal services are performed in a foreign country, compensation may also include overseas differential which may properly consider all expense associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment and other related expenses. Although the aforementioned additional taxes may be considered in establishing overseas differential, any increased compensation calculated directly on the basis of an employee's specific increase in income taxes is unallowable. Except as otherwise specifically provided in this 15-205.6, such costs are allowable to the extent that the total compensation of individual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder. Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable.

(2) (CWAS) Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services. In the administration of this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. Such test need be applied only to those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line. However, certain conditions give rise to the need for special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(i) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits. (CWAS-NA)

(ii) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. (CWAS)

(iii) The contractor's business is such that his compensation levels are not subject to the restraints normally occurring in the conduct of competitive business. (CWAS)

(3) (CWAS) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(4) (CWAS) Notwithstanding any other provisions of this 15-205.6 costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government contracts, are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph (4) unless:

(i) the contractor has been permitted an opportunity to justify the costs, and

(ii) due consideration has been given to whether unusual conditions pertain to the Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(5) In addition to the general requirements set forth in (1) through (4) above, certain forms of compensation are subject to further requirements as specified in (b) through (i) below.

(b) *Salaries and Wages.* (CWAS) Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable.

(c) *Cash Bonuses and Incentive Compensation.* (CWAS) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance, are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply in effect, an agreement to make such payment (but see 15-107). Bonuses, awards, and incentive compensation when any of them are deferred are allowable to the extent provided in (f) below.

(d) *Bonuses and Incentive Compensation Paid in Stock.* (CWAS) Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are allowable to the extent set forth in (c) above (including the incorporation of the principles of paragraph (f) below for deferred bonuses and incentive compensation), subject to the following additional requirements:

(i) valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(ii) accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

(e) *Stock Options.* (CWAS-NA) The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred Compensation.* (CWAS-NA)

(1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension (including early retirement), annuity, stock bonus, and profit sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable only to the extent that:

(i) it is, together with all other compensation paid to the employee, reasonable in amount; and

(ii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to a plan established and consistently applied thereafter by the contractor. Pension plans and other types of deferred compensation not covered by Part 415, Appendix O, are also subject to the provisions of (A), (B), and (C) below. Deferred compensation covered by Part 415, Appendix O, is not subject to the limitations of the Internal Revenue Code and regulations thereunder, but is subject to the provisions of (D) and (E) below.

(A) it is deductible for the same fiscal year for Federal income tax purposes under Section 404 (excluding subsection (a)(5)) of the Internal Revenue Code of 1954 as amended and the regulations of the Internal Revenue Service, *provided*, that

a. normal costs of pension plans incurred subsequent to the effective date of this paragraph, not funded in the year incurred, and pension costs or adjustments of previous years (past service) allocable to the current accounting period but not funded in such period shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing of the Federal income tax return for any taxable year shall be deemed to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period that is deferred pursuant to a waiver granted under the provisions of ERISA as set forth in CAS 412.50(C)(3) will be allowable in the future accounting period(s) in which the funding takes place.

The allowability of such deferred contributions will be limited to the amounts that would have been allowed, had the funding been made in the year the costs were incurred;

b. the determination of allowable costs shall take into consideration the method of valuing pension fund assets as provided for in CAS 413.50(b). Any significant adjustment resulting from the actuarial valuation falling outside of the market value corridors will be amortized (i) in equal amounts over a 15-year period when the immediate gain actuarial cost method is used, or (ii) over the remaining average lives of the workforce if the spread gain actuarial cost method is used;

c. under contracts not subject to Cost Accounting Standards, abnormal forfeitures due to significant reduction in the contractor's level of employment, which are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation, shall be reflected by an adjustment of costs otherwise allowable; where abnormal forfeitures were not taken into account previously, appropriate credit shall be given to the Government pursuant to 15-201.5;

d. any amount paid or funded and deductible in any year under Section 404 (excluding Section 404(a)(5)) of the Internal Revenue Code of 1954 as amended prior to the time it becomes allowable under this paragraph (A) shall be applied to future years, in order of time, as if actually paid and deductible in such years;

e. increased normal and past service costs caused by delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable, are unallowable. If a composite rate is used to allocate pension liability between the segments of a company and if, because of differences in the timing of the funding by segments, an inequity exists, allowable normal cost and past service costs will be limited to that particular segment's calculation of pension costs as provided in CAS 413.50(c)(5). Determination of unallowable costs shall be made in accordance with the actuarial method used in calculating the normal and past service costs;

f. the allowability of the cost of indemnification of the Pension Benefit Guaranty Corporation (PBGC), pursuant to Section 4062 or 4064 of the Employee Retirement Income Security Act of 1974 (ERISA), because of the termination of an employee deferred compensation plan will be considered on a case-by-case basis; *providing* that if insurance was required by the PBGC pursuant to Section 4023 of ERISA, it was so obtained, and the indemnification payment is not recoverable thereunder. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work; and if a beneficial or other equitable relationship exists, the Government will participate, provisions of 15-205.16(a)(3) and 15-205.16(b) notwithstanding, in the indemnification payment to the extent of its fair share.

or

(B) It is deductible in the same fiscal year for Federal income tax purposes under Section 404(a)(5) of the Internal Revenue Code of 1954 as amended and the regulations of the Internal Revenue Service, except that the costs of unfunded pension and retirement benefits paid directly to, or on behalf of, former employees shall be allowable only to the extent the contractor demonstrates that such costs, together with any pension and retirement costs allowed pursuant to (A) above, do not exceed the amount that would be allowable under (A) above if the contractor were providing for equivalent benefits on an actuarial basis in the current period. Amounts paid to employees under pay-as-you-go plans as an inducement for early retirement should be treated as supplemental pension plans under this provision. To be allowable, these costs must be incurred under a well defined plan which the contractor consistently follows thereafter. The scale of payments to the retired employees should be reasonable, the costs should be computed in accordance with this provision, and the costs should be allocated according to the contractor's system of accounting for pension costs.

C) It complies with the provisions of Part 412 and Part 413, Appendix O, which are incorporated here in their entirety; and when any of the contractor's contracts are subject to Cost Accounting Standards, these provisions will apply, commencing with the contractor's fiscal year as prescribed by Part 412.80 and Part 413.80, Appendix O. The amount of deferred compensation costs which may be allowed shall not, however, exceed the amount determined under the provisions of the standard, subject to the cost limitations and exclusions set forth in subparagraphs (A) and (B) above.

(D) It complies with the provisions of Part 415, Appendix O, which are incorporated herein in their entirety; and when any of the contractor's contracts are subject to Cost Accounting Standards Board standards, these provisions will be applicable commencing with the contractor's fiscal year as prescribed by the terms of Part 415.80, Appendix O. The amount of deferred compensation cost which may be allowed shall not, however, exceed the amount determined under the provisions of Part 415, Appendix O, except that the cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(E) Deferred compensation payments to employees under awards made prior to the effective date of Part 415, Appendix O, are allowable to the extent they would have been allowable under 15-205.6, dated 1 July 1976.

(g) *Fringe Benefits.* (CWAS) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. The cost of fringe benefits, including, but not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans; is allowable, if reasonable and consistent with the following.

(1) On contracts subject to CAS, the costs of compensated personal absence must be measured and allocated in accordance with Part 408 of Appendix O (CAS 408, Accounting for the Cost of Compensated Personal Absence). For all fringe benefits not addressed by the provisions of CAS 408, the criteria in (2) below apply.

(2) On contracts not subject to CAS, the cost of all fringe benefits are allowable to the extent that they are required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance Pay.* (CWAS) See 15-205.39.

(i) *Training and Education Expenses. (CWAS) See 15-205.44.*

(j) Costs which are unallowable under other paragraphs of this Part 2 of Section XV shall not be allowable under 15-205.6 solely on the basis that they constitute personal compensation.

(k) *Backpay Resulting from Violations of Federal Labor Laws.* (CWAS-NA) Backpay may result from a negotiated settlement, order or court decree which resolves a violation of Federal labor laws. Such backpay falls into two categories; one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations such as when the employee was improperly discharged, discriminated against or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay is unallowable.

15-205.7 *Contingencies.* (CWAS-NA)

(a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at a present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the contractor's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(i) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work; in such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(ii) those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage. (See, for example, 15-205.16, 15-205.20, and 15-205.39.)

15-205.8 *Contributions and Donations.* (CWAS-NA) Contributions and donations are unallowable.

15-205.9 *Depreciation.* (CWAS-NA)

(a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular contractor's operations as distinguished from physical life and shall be evidenced by the actual or estimated retirement and replacement practice of the contractor.

(b) Contractors having contracts subject to Cost Accounting Standard 409 of Appendix O (CAS 409, Depreciation of Tangible Capital Assets) must adhere to the provisions of that Standard for all CAS covered contracts, and may elect to adopt the Standard for all uncovered contracts. All provisions of CAS 409 are applicable if the election is made. When CAS 409 is applicable, its provisions supersede any conflicting provisions of this cost principle. Once electing to adopt CAS 409 for uncovered contracts, contractors must continue to follow its provisions until notification is received of final acceptance of all deliverable items on all open DoD negotiated contracts. The principles which follow are applicable to those contracts to which CAS 409 is not applied.

(c) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable element of contract cost *provided* the contractor is able to demonstrate that such costs are reasonable and allocable to the contract. Subject to (f) and (g) below:

- (i) Depreciation will ordinarily be considered reasonable if the contractor follows depreciation policies and procedures which:
  - (A) are consistent with the policies and procedures he follows in the same cost center in connection with his business other than Government business;
  - (B) are reflected in his books of accounts and financial statements; and
  - (C) are used by him for Federal income tax purposes, and are acceptable for such purposes;
- (ii) Where the depreciation reflected on a contractor's books of account and financial statements differs from that used and acceptable for Federal income tax purposes, reimbursement shall be based upon the cost of the asset to the contractor amortized over the estimated useful life of the property using depreciation methods (straight line, sum of the years' digits, etc.) acceptable for income tax purposes. Allowable depreciation shall not exceed the amounts used for book and statement purposes and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same cost center in connection with his business other than Government business.

(iii) Depreciation for reimbursement purposes in the case of tax-exempt organizations shall be determined on the basis outlined in (ii) above.

(d) Special considerations are required for assets acquired prior to the effective date of this principle where, on the effective date of this principle, the undepreciated balance of such assets resulting from depreciation policies and procedures used previously for Government contracts and subcontracts is different from the undepreciated balance of such assets on the books and financial statements. Generally, the undepreciated balance for contract cost purposes shall be depreciated over the remaining life using the methods and lives followed for book purposes. The aggregate depreciation on any asset allowable after the effective date of this 15-205.9 shall not exceed the cost basis of the asset less any depreciation allowed or allowable under prior procurement regulations.

(e) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives set forth in (a) above, vary with volume of production or use of multishift operations.

(f) In the case of emergency facilities covered by certificates of necessity, a contractor may elect to use normal depreciation without requesting a determination of "true depreciation", or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board. The method elected must be followed consistently throughout the life of the emergency facility. When an election is made to use normal depreciation, the criteria in (c) above shall apply for both the emergency period and the post-emergency period. When an election is made to use "true depreciation", the amount allowable as depreciation:

(i) with respect to the emergency period (five years), shall be computed in accordance with the determination of the Emergency Facilities Depreciation Board and allocated rateably over the full five year emergency period; *provided* no other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and

(ii) after the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life *provided* the remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."

(g) No depreciation, rental, or use charge shall be allowed on property acquired at no cost from the Government by the contractor or by any division, subsidiary or affiliate of the contractor under a common control.

(h) The depreciation on any item which meets the criteria for allowance at a "price" in accordance with 15-205.22(e) may be based on such price, *provided* the same depreciation policies and procedures are used for costing purposes for all business of the using division, subsidiary or organization under common control.

(i) No depreciation or rental shall be allowed on property fully depreciated by the contractor or by any division, subsidiary or affiliate of the contractor under a common control; however, a reasonable charge for the use of fully depreciated property may be agreed upon and allowed (but see 15-107). In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, effect of any increased maintenance charges or decreased efficiency due to age and the amount of depreciation, if any, previously charged to Government contracts or subcontracts.

(j) Cost Accounting Standard (CAS) 404 *Capitalization of Tangible Assets* is applicable to those assets which are acquired by means of a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB). Compliance with CAS 404 and FAS-13 requires that such leased assets (captial lease) be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, both for financial and cost accounting purposes. Therefore, any leased assets whether leased prior to, on, or after 1 January 1977, which are capitalized prior to, on, or after 1 January 1977 under the provisions of FAS-13, are subject to the provisions on depreciation for tangible capital assets enunciated in this cost principle (15-205.9) — they are not subject to the provisions on rental costs set forth in 15-205.34. Existing leases entered into prior to 1 January 1977, which the contractor elects not to capitalize until 1 January 1981 as provided in FAS-13 will be subject to the provisions of rental costs set forth in 15-205.34 (1 July 1976) until such date as they are capitalized. The provisions of this paragraph (15-205.9(j)) apply whether or not the contractor is subject to CAS 404. The standards of Financial Accounting and Reporting set forth in FAS-13 are incorporated into this cost principle and shall govern in the application of this principle except when the provisions of subparagraphs (1), (2), and (3) set forth below conflict with the standards in FAS-13. In this event, the provisions of subparagraphs (1), (2), and (3) below shall govern.

(1) *Sales and Leaseback.* Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the property.

(2) *Leases Between Related Parties.* Capital leases for all real and personal property which is leased from any division, subsidiary, or affiliate of the contractor under common control shall be subject to the provisions of this paragraph 15-205.9(j). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, the depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(3) Assets acquired under leases which the contractor must capitalize in accordance with FAS-13 shall not be treated as purchased assets for contract costing purposes if the leases are covered by the provisions of 15-205.34(f).

15-205.10 *Employee Morale, Health, Welfare and Food Service and Dormitory Costs and Credits.* (CWAS)

(a) Employee morale, health and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph 15-205.10, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at price or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the contractor can demonstrate that unusual circumstances exist (*e.g.*, (i) where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(d) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plan, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service (but see (e)).

(e) Contributions by the contractor to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the contractor directly.

15-205.11 *Entertainment Costs.* (CWAS-NA) Costs of amusement, diversion, social activities and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable. (But see 15-205.10 and 15-205.43).

15-205.12 *Cost of Idle Facilities and Idle Capacity.* (CWAS)

(a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below.

(1) *Facilities* means plant or any portion thereof (inclusive of land integral to the operation); equipment individually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

(2) *Idle Facilities* means completely unused facilities that are excess to the contractor's current needs.

(3) *Idle Capacity* means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis* less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period.

*A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved

(4) *Costs of Idle Facilities or Idle Capacity* are costs such as maintenance, repair, housing, rent, and other related costs, *e.g.*, property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) they are necessary to meet fluctuations in workload; or

(ii) although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see 15-205.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, *provided* the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

15–205.13 *Fines and Penalties.* (CWAS-NA) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the contract, or instructions in writing from the contracting officer.

15–205.14 *Reserved.*

15–205.15 *Fringe Benefits.* See 15–205.6(g).

15–205.16 *Insurance and Indemnification (Purchased Insurance CWAS) (Self-Insurance CWAS-NA)*

(a) Insurance by purchase or by self-insuring includes (i) coverage which the contractor is required to carry, or which is approved, under the terms of the contract, and (ii) any other coverage which the contractor maintains in connection with the general conduct of his business. Any contractor desiring to establish a program of self-insurance applicable to contracts not subject to Cost Accounting Standard (CAS) 416 must comply with the self-insurance provisions of the Standard as well as Section X of this Regulation. Approval of a contractor's insurance program in accordance with Section X does not constitute a determination as to the allowability of the program's cost. The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions set forth in the following subparagraphs.

(1) Costs of insurance required or approved, and maintained, pursuant to the contract, are allowable.

(2) Costs of other insurance maintained by the contractor in connection with the general conduct of his business are allowable subject to the following limitations:

(i) types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(ii) costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(iii) the cost of casualty insurance premiums for insurance coverage in excess of acquisition cost of the insured assets is allowable *provided* the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives, who have supervision or direction of (A) all or substantially all of the contractor's business, or (B) all or substantially all of the contractor's operations at any one plant or separate location in which the contract is being performed, or (C) a separate and complete industrial operation in connection with the performance of the contract; and

(v) costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation. (See 15-205.6.)

(3) Actual losses are unallowable unless expressly provided for in the contract, except:

(i) minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable; and

(ii) losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practices, are allowable for contracts not subject to CAS 416 when the contractor elected not to establish a self-insurance program. Such contracts are not subject to the self-insurance provisions of CAS 416 (see 10-301.3). Also, for contracts subject to CAS 416, and those made subject to the self-insurance provisions of the Standard as a result of the contractor's having established a self-insurance program (see 15-205.16(a)), actual losses may be used as a basis for charges under a self-insurance program when the actual amount of losses will not differ significantly from the projected average losses for the accounting period (see 4 CFR 416.50(a)(2)(ii)).

(4) Contracts operating under a program of self-insurance must obtain approval of the program when required by 10-303(a).

(b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.

(c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance and charge therfor must comply with the self-insurance provisions of CAS 416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor, but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had he insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable (see 10-303(b)).

(f) Late premium payment charges related to employee deferred compensation plan insurance, incurred pursuant to Section 4007 or Section 4023 of the Employee Retirement Income Security Act of 1974, are unallowable.

(g) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent authorized by law, which authorization is implemented in a provision of the contract, except as provided in subparagraphs (i) and (ii) of (a)(3) above.

15-205.17 *Interest and Other Financial Costs.* (CWAS-NA) Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable except for interest assessed by State or local taxing authorities under the conditions set forth in 15-205.41. (But see 15-205.24.)

15-205.18 *Labor Relations Costs.* (CWAS) Costs incurred in maintaining satisfactory relations between the contractor and his employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

15-205.19 *Losses on Other Contracts.* (CWAS-NA) An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research, and development, or other nature, is unallowable.

15-205.20 *Maintenance and Repair Costs.*

(a) (CWAS) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 15-205.9):

(i) normal maintenance and repair costs are allowable;

(ii) extraordinary maintenance and repair costs are allowable, *provided* such are allocated to the periods to which applicable for purposes of determining contract costs. (But see 15–107.)

(b) (CWAS-NA) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

15–205.21 *Manufacturing and Production Engineering Costs.* (CWAS) Costs of manufacturing and production engineering including engineering activities in connection with the following, are allowable:

(i) current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(ii) current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

15–205.22 *Material Costs.* (CWAS)

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs consideration will be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in any provision of the contract relating to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of (b) through (e) below.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, *provided* such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the contractor under a common control shall be on the basis of cost incurred in accordance with this Part 2, except that when it is the established practice of the transferring organization to price interorganization transfers of materials, supplies and services at other than cost for commercial work of the contractor or any division, subsidiary or affiliate of the contractor under a common control, allowance may be at a price when:

(i) it is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public" in accordance with 3-807.7(b); or

(ii) it is the result of "adequate price competition" in accordance with 3-807.7, and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity;

provided that in either case:

(1) the price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary or affiliate of the contractor under a common control) for a like quantity under comparable conditions, and

(2) the price is not determined to be unreasonable by the contracting officer.

The price determined in accordance with (i) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of contract requirements.

15-205.23 *Organization Costs.* (CWAS-NA) Expenditures in connection with (i) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, or (ii) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counsellors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders whether or not additional capital is raised.

15-205.24 *Other Business Expenses.* (CWAS) Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the contractor, cost of shareholders' meetings, normal proxy solicitations, preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

15-205.25 *Relocation Costs.*

(a) Relocation costs, for the purpose of this Part, are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. These costs may include but are not limited to:

(i) cost of travel of the employee and members of his immediate family (see 15-205.46) and transportation of his household and personal effects to the new location;

(ii) cost of finding a new home, such as advance trips by employees and spouses to locate living quarters, and temporary lodging during the transition period;

(iii) closing costs (*i.e.*, brokerage fees, legal fees, appraisal fees, etc.) incident to the disposition of actual residence owned by the employee when notified of transfer;

(iv) other necessary and reasonable expenses normally incident to relocation, such as cost of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchase of insurance against damage to or loss of personal property;

(v) loss on sale of home;

(vi) acquisition of a home in a new location and all costs incident thereto;

(vii) continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing-up expenses), utilities, taxes, property insurance, etc., after settlement date or lease date of new permanent residence; and

(viii) continuing mortgage principal and interest payments on residence being sold.

(b) (CWAS) Subject to (c) and (d) below, relocation costs of the type covered in (a)(i), (ii), (iii), (iv) and (vii) above are allowable, ***provided:***

(i) the move is for the benefit of the employer;

(ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically;

(iii) the costs are not otherwise unallowable under the provisions of 15-205.33, or any other paragraph of Part 2 (see 15-107 as related to large scale contractor relocation); and

(iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) (CWAS) Costs otherwise allowable under (b) above are subject to the following additional provisions:

(i) the transition period for incurrence of costs of the type covered in (a)(ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time;

(ii) allowance for the combined total of costs of the type covered in (a)(iii) and (a)(vii) above shall not exceed 8% of the sales price of the property sold; and

(iii) costs of canceling an unexpired lease under (a)(iv) shall not exceed 3 times the monthly rental.

Costs of the type covered in (a)(iii), (a)(iv) and (a)(vii) above are allowable only in connection with the relocation of existing employees.

(d) (CWAS-NA) Costs of the type covered in (a) (v) and (vi) and (a)(viii) above are not allowable. Costs of the type covered in (a)(iii) and (iv) above are not allowable for newly recruited employees.

(e) (CWAS-NA) Payments for employee income taxes incident to reimbursed relocation costs are unallowable.

15-205.26 *Patent Costs.*

(a) (CWAS) Costs of (i) preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures; (ii) preparing documents and any other patent costs, in connection with the filing and prosecution of a United States patent application where title or royalty free license is required by Government contract to be conveyed to the Government; and (iii) general counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable. (But see 15-205.31.)

(b) (CWAS-NA) Costs of preparing disclosures, reports and other documents and of searching the art to the extent necessary to make invention disclosures, if not required by the contract, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application with respect to which the contract does not require conveying title or a royalty free license to the Government, are unallowable. (Also see 15-205.36.)

15-205.27 *Pension Plans.* See 15-205.6.

15-205.28 *Plant Protection Costs.* (CWAS) Costs of items such as (i) wages, uniforms and equipment of personnel engaged in plant protection, (ii) depreciation on plant protection capital assets, and (iii) necessary expenses to comply with military security requirements, are allowable.

15-205.29 *Plant Reconversion Costs.* (CWAS-NA) Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the military contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other contracts.

15-205.30 *Precontract Costs.* (CWAS-NA) Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract. (But see 15-107.)

15-205.31 *Professional and Consultant Service Costs — Legal, Accounting, Engineering, and Other.* (*CWAS-NA*)

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor are allowable, subject to (b), (c), (d), and (e) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 15-205.26).

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors among others may be relevant:

(i) the nature and scope of the service rendered in relation to the service required;

(ii) the necessity of contracting for the service considering the contractor's capability in the particular area;

(iii) the past pattern of such costs, particularly in the years prior to the award of Government contracts;

(iv) the impact of Government contracts on the contractor's business (*i.e.*, what new problems have arisen);

(v) whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(vi) whether the service can be performed more economically by employment rather than by contracting;

(vii) the qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-government contracts;

(viii) adequacy of the contractual agreement for the service (*e.g.*, description of the service; estimate of time required, rate of compensation; termination provisions).

(c) In addition to (b) above, retainer fees to be allowable must be supported by evidence that:

(i) the services covered by the retainer agreement are necessary and customary;

(ii) the level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable); and

(iii) the retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, considering factors such as cost, and level of expertise.

(d) Costs of legal, accounting and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract. (Also see 15-205.23.)

(e) Except for retainers (see (c) above), fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the services furnished. (Also see 15-205.37(c).)

15-205.32 *Gains and Losses on Disposition of Depreciable Property or Other Capital Assets.* (CWAS-NA)

(a) Gains and losses from the sale, retirement or other disposition (but see 15-205.16) of depreciable property, for purposes of computing contract costs, shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to such assets was included (but see (d)) below).

(b) Gains and losses on disposition of tangible capital assets including those acquired under capital leases (see 15-205.9(j)) shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain to be recognized for contract costing purposes shall be limited to the difference between the acquisition cost (value at which capitalized for assets acquired under capital lease) of the asset and its undepreciated balance, except see (c)(ii)(A) or (B) below.

(c) Special considerations apply to involuntary conversions. An involuntary conversion of property occurs when a contractor's property is destroyed in whole or in part by events, over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following shall govern regarding involuntary conversions:

- (i) where there is a cash award and the converted asset is not replaced, gain or loss will be recognized in the period of disposition but the gain recognized for contract costing purposes will be limited to the difference between the original acquistion cost of the asset and its undepreciated balance;
- (ii) where the converted asset is replaced, contractor will either—
  - (A) adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or
  - (B) recognize the gain or loss in the period of disposition, in which case the Government will participate to the same extent as outlined in (c)(i) above.

(d) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit where:

- (i) such gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 15-205.9, or
- (ii) the property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions shall be considered on a case-by-case basis.

(f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

15-205.33 *Recruitment Costs.*

(a) (CWAS) Subject to (b), (c), and (d) below, and *provided* that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. When the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Cost of help-wanted advertising is unallowable if the advertising:

(1) is for other than for personnel required for the performance of obligations under a defense contract (see 15-205.1); (CWAS-NA)

(2) does not describe specific positions or classes of positions; (CWAS-NA)

(3) is excessive in relation to the number and importance of the positions, or in relation to the practices of the industry; (CWAS)

(4) includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities; (CWAS-NA)

(5) is designed to "pirate" personnel from another defense contractor; (CWAS-NA) and

(6) includes color (in publications). (CWAS)

(c) (CWAS-NA) Costs of excessive salaries, fringe benefits and special emoluments that have been offered to prospective employees, designed to "pirate" personnel from another defense contractor, or in excess of the standard practices in the industry, are unallowable.

(d) (CWAS-NA) Relocation costs incurred incident to recruitment of new employees are subject to 15-205.25. When such costs have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the contractor shall be required to refund or credit such relocation costs to the Government. However, costs of travel to an overseas location shall be considered travel costs in accordance with 15-205.46 and not relocation costs for the purpose of this subparagraph, if (i) dependents are not permitted at that location for any reason, and (ii) such costs do not include costs of transporting household goods.

15-205.34 *Rental Costs* (*Including Sale and Leaseback of Property*). (CWAS)

(a) This paragraph 15-205.34 is applicable to the cost of renting or leasing property, real and personal, acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB), except automatic data processing equipment (ADPE). (See 15-205.48.) Compliance with 15-205.9(j) requires that assets acquired by means of "capital leases" as defined in the aforementioned (FAS-13) shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges (but see (f) below).

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(b) Rental costs under operating leases are allowable to the extent that the rates are reasonable at the time of the decision to lease in light of such factors as rental costs of comparable property, if any, and market conditions in the area, the type, life expectancy, condition, and value of property leased, alternatives available, and other provisions of the agreement.

(c) Rental costs under a sale and leaseback arrangement shall be allowable only up to that amount the contractor would be allowed had he retained title to the property.

(d) Charges in the nature of rent between any divisions, subsidiaries, or organization under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Section XV); *provided* that no part of such costs shall duplicate any other allowed costs. However, rental cost of personal property, which is leased from any division, subsidiary, or affiliate of the contractor under common control, which has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with (b) above.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in 15-205.42(e).

(f) Rental costs under leases entered into prior to March 1, 1970, are allowable for the remaining term of the lease (excluding options not exercised prior to March 1, 1970) to the extent they would have been allowable under 15-205.34 dated January 1, 1969.

15-205.35 *Independent Research and Development Costs.*

(a) *Definitions.* A contractor's independent research and development effort (IR&D) is that technical effort which is not sponsored by, or required in performance of, a contract or grant and which consists of projects falling within the following three areas: (i) basic and applied research, (ii) development, and (iii) systems and other concept formulation studies. IR&D effort shall not include technical effort expended in the development and preparation of technical data specifically to support the submission of a bid or proposal. For the purposes of this paragraph:

(1) *Basic research* is that research which is directed toward increase of knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof.

(2) *Applied research* is that effort which (A) normally follows basic research, but may not be severable from the related basic research, (B) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and (C) attempts to advance the state of the art. *Applied research* does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the definition of the term "development," defined below.

(3) *Development* is the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. *Development* includes the functions of design engineering, prototyping, and engineering testing. *Development* excludes subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product.

(4) *Systems and other concept formulation studies* are analyses and study efforts either related to specific IR&D efforts or directed toward the identification of desirable new systems, equipments or components, or desirable modifications and improvements to existing systems, equipments, or components.

(5) *Company* includes all divisions, subsidiaries, and affiliates of the contractor under common control.

(b) *Composition of Costs.* IR&D costs shall include not only all direct costs, but also all allocable indirect costs except that general and administrative costs shall not be considered allocable to IR&D. Both direct and indirect costs shall be determined on the same basis as if the IR&D project were under contract.

(c) *Allocation.* As a general rule, IR&D costs shall be allocated to contracts on the same basis as the general and administrative expense grouping of the profit center (see 3-1003.3) in which such costs are incurred. However, where IR&D costs clearly benefit other profit centers, or the entire company, such costs shall be allocated through the G&A of such other profit centers or through the corporate G&A, as appropriate. In those instances when allocation of IR&D through the G&A base does not provide equitable cost allocation, the contracting officer may approve use of a different base. Where allowable IR&D is established by advance agreement pursuant to (d)(1) below, the advance agreement shall specify the allocation procedures.

(d) *Allowability.* Except as provided in (e) below, costs for IR&D are allowable only in accordance with the following (but see 6-1304.3(a)(iv) and 6-1304.3(c)):

(1) *Companies Required to Negotiate Advance Agreements (CWAS-NA).*

(A) Any company which received payments, either as a prime contractor or subcontractor, in excess of $2 million from the DoD for IR&D and B&P in a fiscal year, is required to negotiate an advance agreement with the Government which establishes a ceiling for allowability of IR&D costs for the following fiscal year. Computation of the amount of IR&D and B&P costs to determine whether the $2 million criterion was reached will include only those recoverable IR&D and B&P costs allocated during the company's previous fiscal year to all DoD prime contracts and subcontracts for which the submission and certification of cost or pricing data was required in accordance with Section 2306(f) of Title 10, United States Code. The computation shall include full burdening in the same manner as if the IR&D and B&P projects were contracted for except that G&A will not be applied.

(B) When a company meets the criterion in (A) above, required advance agreements may be negotiated at the corporate level and/or with those profit centers (see 3–1003.3) which contract directly with the DoD and which in the preceding year allocated recoverable IR&D and B&P costs in excess of $250,000 including burdening as in (A) above, to DoD contracts and subcontracts for which the submission and certification of cost or pricing data was required in accordance with Section 2306(f) of Title 10, United States Code. When ceilings are negotiated for separate profit centers of the company, the allowability of IR&D costs for any center which, in its previous fiscal year, allocated less than $250,000 of IR&D and B&P costs to such DoD contracts and subcontracts may be determined in accordance with (d)(2) below.

(C) Companies which meet the threshold in (A) above shall submit technical and financial information to support their proposed IR&D program in accordance with guidance furnished by the Armed Services Research Specialists Committee. Results of the technical evaluation performed by the Armed Services Research Specialists Committee, including determination of potential relationship, will be made available to the contractor by the cognizant Departmental central office.

(D) Ceilings are the maximum dollar amounts of total costs for IR&D work that will be allowable for allocation to all work of that part of the company's operation covered by an advance agreement. Within the ceiling limitations contractors will not be required to share IR&D costs. In negotiating a ceiling, in addition to other considerations, particular attention must be paid to such factors as:

(i) The technical evaluation of the Armed Services Research Specialists Committee including the potential relationship of IR&D projects to a military function or operation.

(ii) Comparison with previous year's programs including the level of the Government's participation.

(iii) Changes in the Company's business activities.

(E) The total amount of IR&D costs allocated to DoD contracts pursuant to this subparagraph (1) shall not exceed the total of expenditures for IR&D projects with a potential relationship to a military function or operation. For contracts which do not provide for cost determinations on a historical basis, this requirement will be considered to have been met if the estimated IR&D costs allocated to the contract do not exceed its proportionate share of the total estimated costs of IR&D with a potential relationship to a military function or operation.

(F) No IR&D costs shall be allowable if a company fails to initiate negotiation of a required advance agreement prior to the end of the fiscal year for which the agreement is required.

(G) When negotiations are held with a company meeting the $2 million criterion or with separate profit centers (when negotiations are held at that level under (B) above) and an advance agreement is not reached, payment for IR&D costs is required to be reduced substantially below that which the company or profit center would otherwise have received. The amount of such reduced payment shall not exceed 75% of the amount which, in the opinion of the contracting officer, the company or profit center would be entitled to receive under an advance agreement. Written notification of the contracting officer's determination of a reduced amount shall be provided.the contractor. In the event that an advance agreement is not reached prior to the end of the contractor's fiscal year for which such agreement is to apply, negotiations shall immediately be terminated and the contracting officer's determination of the reduced amount shall be furnished.

(H) Contractors may appeal decisions of the contracting officer to reduce payments. Such appeal shall be filed with the contracting officer within 30 days of receipt of a decision. For the purpose of hearing and deciding such appeals, each department will establish an appeals hearing group consisting of the following:

(i) A representative to be designated by the Assistant Secretary (Installations and Logistics) or the Director, DSA, who shall be Chairman;

(ii) A representative to be designated by the Assistant Secretary (Research and Development) or ODDR&E in the case of DSA; and

(iii) A representative to be designated by the General Counsel, Judge Advocate General of the Department or Counsel of DSA. Determinations of the appeals group shall be the final and conclusive determination of the Department of Defense.

(I) Advance agreements negotiated shall include at least the following:

(i) A separate dollar ceiling for IR&D. However, provision shall be made permitting the contractor to recover costs for IR&D above the negotiated ceiling, provided that recovery of B&P costs covered by the same agreement is decreased below its ceiling by a like amount.

(ii) A provision stating how IR&D costs are to be allocated (see (c) above).

(iii) A statement that the costs for IR&D work recoverable under contracts citing DoD funds subject to Section 203, P.L. 91–441 limitations shall not exceed A such contracts' allocable share of the ceiling, and B the total costs of the contractor's IR&D determined to have a potential relationship to a military function or operation.

(iv) A statement that estimated costs or actual costs incurred, as appropriate, not in excess of the ceilings negotiated shall be used in the pricing of all contractual actions when negotiations are based on elements of cost and in final price determinations.

(J) Prior to the execution of an advance agreement, the IR&D factor to be used for forward pricing and interim billing will be developed by and obtained from the cognizant central office of the Department responsible for negotiating IR&D advance agreements. The IR&D factor shall exclude estimated or actual costs for projects considered unrelated to a military function or operation.

(2) *Companies Not Required to Negotiate Advance Agreements* (*CWAS*). Allowable IR&D costs for companies not required to negotiate advance agreements in accordance with (1) above shall be established by a formula, either on a company-wide basis or by profit centers, computed as follows:

(i) Determine the ratio of IR&D costs to total sales (or other base acceptable to the contracting officer) for each of the preceding three years and average the two highest of these ratios; this average is the IR&D historical ratio;

(ii) Compute the average annual IR&D costs (hereafter called average), using the two highest of the preceding three years;

(iii) IR&D costs for the center for the current year which are not in excess of the product of the center's actual total sales (or other accepted base) for the current year and the IR&D historical ratio computed under (i) above (hereafter called product) shall be considered allowable only to the extent the product does not exceed 120% of the average. If the product is less than 80% of the average, costs up to 80% of the average shall be allowable.

(iv) Costs which are in excess of the ceiling computed in (iii) above are not allowable except where the ceiling computed for bid and proposal cost under 15–205.3 is reduced in an amount identical to the amount of any increase over the IR&D ceiling computed in (iii) above.

However, at the discretion of the contracting officer, an advance agreement may be negotiated when the contractor can demonstrate that the formula would produce a clearly inequitable cost recovery. The requirements of (d)(1) above are not mandatory for such agreements.

(e) *Deferred Costs* (*CWAS-NA*). IR&D costs which were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at his own risk in anticipation of recovering the development costs in the sale price of the product provided that:

(1) The total amount of IR&D costs applicable to the product can be identified,

(2) The proration of such costs to sales of the product is reasonable,

(3) The contractor had no Government business during the time that the costs were incurred or he did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product, and

(4) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

When deferred costs are recognized, the contract (except firm fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

15–205.36 *Royalties and Other Costs for Use of Patents.*

(a) (CWAS) Royalties on a patent or amortization of the cost of acquiring by purchase a patent or rights thereto, necessary for the proper performance of the contract and applicable to contract products or processes, are allowable unless—

(i) the Government has a license or the right to free use of the patent; (CWAS-NA)
(ii) the patent has been adjudicated to be invalid, or has been administratively determined to be invalid; (CWAS-NA)
(iii) the patent is considered to be unenforceable; (CWAS-NA) or
(iv) the patent is expired. (CWAS-NA)

(b) (CWAS) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; *e.g.*:

(i) royalties paid to persons, including corporations, affiliated with the contractor;
(ii) royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or
(iii) royalties paid under an agreement entered into after the award of the contract.

(c) (CWAS) In any case involving a patent formerly owned by the contractor, the amount of royalty allowed should not exceed the cost which would have been allowed had the contractor retained title thereto.

(d) See 15–107, regarding advance understandings.

15–205.37 *Selling Costs. (CWAS-NA)*

(a) Selling costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

(b) Selling costs are allowable to the extent they are reasonable and are allocable to Government business (but see 15–107 and 15–205.1 , and 6-1304.3). Allocability of selling costs will be determined in the light of reasonable benefit to the U.S. Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to U.S. Government use for its own requirements. Selling costs incurred in connection with potential and actual Foreign Military Sales as defined by the Arms Export Control Act, or foreign sales of military products shall not be allocable to U.S. Government contracts for U.S. Government requirements.

(c) Notwithstanding (b) above, salesmen's or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, whether foreign or domestic (but see 6-1305), are allowable only when paid to bona fide employees (see 1-505.3) or bona fide established commercial or selling agencies (see 1-505.4) maintained by the contractor for the purpose of securing business.

15-205.38 *Service and Warranty Costs.* (CWAS) Such costs include those arising from fulfillment of any contractual obligation of a contractor to provide services such as installation, training, correcting defects in the products, replacing defective parts, making refunds in the case of inadequate performance, etc. When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

15-205.39 *Severance Pay.*

(a) (CWAS) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by contractors to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (iv) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(i) actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant; or, where the contractor provides for accrual of pay for normal severances such method will be acceptable if the amount of the accural is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the contractor's plant; (CWAS) and

(ii) abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence. (CWAS-NA)

15-205.40 *Special Tooling and Special Test Equipment Costs.* (CWAS-NA)

(a) The term "*special tooling*" is defined in 13-101.5.

(b) The term "*special test equipment*" is defined in 13-101.6.

(c) The cost of special tooling and special test equipment used in the performance of one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of—

- (i) items acquired by the contractor prior to the effective date of the contract, or replacements of such items, whether or not altered or adapted for use in the performance of the contract; or
- (ii) items the acquisition of which by the Government is specifically excluded by the Schedule shall be allowable only as depreciation or amortization.

(d) Where items are disqualified as special tooling because with less than substantial modification or alteration they can be made general purpose, and where items are disqualified as special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration will be allowable.

15-205.41 *Taxes*.

(a) (CWAS) Taxes are charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes (including State and local income taxes, except as provided in (b) below) which the contractor is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for—

(i) Federal income and excess profits taxes; (CWAS-NA)

(ii) taxes in connection with financing, refinancing, refunding operations or reorganizations (see 15-205.17 and 15-205.23); (CWAS-NA)

(iii) taxes from which an exemption is available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from the preferential treatment applicable thereto shall be unallowable. The objective of these provisions is to assure that any tax preference attributable to Government contract activity is realized by the Government. The term "*exemption*", as used herein, means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise; (CWAS-NA)

(iv) special assessments on land which represent capital improvements (CWAS-NA);

(v) taxes (including excises) on property, real or personal, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; *e.g.*, taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work.) The cost of taxes incurred by reason of the use of property on both Government and non-Government work shall be apportioned to all such work on the basis of the use of such property on the respective final cost objective (CWAS-NA); and

(vi) taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to Section 4971 or Section 4975 of the Internal Revenue Code of 1954, as amended, respectively (CWAS-NA).

(b) (CWAS-NA) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements are unallowable.

(c) (CWAS-NA) Taxes otherwise allowable under (a) above, but upon which a claim of illegality or erroneous assessment exists, are allowable; *provided*, that the contractor prior to payment of such taxes—

(i) promptly requests instructions from the contracting officer concerning such taxes, and

(ii) takes all action directed by the contracting officer arising out of (c)(i) above or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (A) determine the legality of such assessment, or, (B) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to issue timely direction after prompt request therefor, are also allowable.

(d) (CWAS-NA) Any refund of taxes, interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, *provided* any interest actually paid or credited to a contractor incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest or penalties.

15-205.42 *Termination Costs.* (CWAS-NA) Contract terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the contract not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this Part in termination situations.

(a) *Common Items.* The cost of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that he could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the contractor, the contracting officer should consider the contractor's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs Continuing After Termination.* If in a particular case, despite all reasonable efforts by the contractor, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Part, except that any such costs continuing after termination due to the negligent or willful failure of the contractor to discontinue such costs shall be considered unallowable.

(c) *Initial costs*, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of production and not fully absorbed because of the termination.

Such costs may include the cost of labor and material, and related overhead attributable to such factors as—

(i) excessive spoilage resulting from inexperienced labor,
(ii) idle time and subnormal production occasioned by testing and changing methods of processing,
(iii) employee training, and
(iv) unfamiliarity or lack of experience with the product, materials, manufacturing processes and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated contract, including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the contractor's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the contract.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one contract shall not be allocated to other contracts.

(d) *Loss of useful value of special tooling, special machinery and equipment* is generally allowable, *provided*—

(i) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the contractor;
(ii) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and
(iii) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, special machinery and equipment was acquired.

(e) *Rental cost under unexpired leases* are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if—

(i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and
(ii) the contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, *provided*, such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(f) (1) Settlement expenses including the following are generally allowable:

- (i) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract, and for the termination and settlement of subcontracts;
- (ii) reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract; and
- (iii) indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision.

(2) When settlement expenses of a termination are significant, a separate cost account(s) or work order(s) shall be established to accumulate and identify these expenses separately.

(g) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors, *provided*, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 15-201.4 and 15-203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

15-205.43 *Trade, Business, Technical and Professional Activity Costs.* (CWAS)

(a) *Memberships.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.* This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and Conferences.* This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

15-205.44 *Training and Educational Costs.*

(a) (CWAS) Costs of preparation and maintenance of a program of instruction at non-college level, including but not limited to on-the-job, classroom and apprenticeship training, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and

- (i) salaries of the director of training and staff when the training program is conducted by the contractor; or
- (ii) tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) (CWAS) Costs of part-time education, at an under-graduate or post-graduate college level, including that provided at the contractor's own facilities, are allowable only when the course or degree pursued is relative to the field in which a bona fide employee is now working or may reasonably be expected to work, and are limited to—

- (i) training materials;
- (ii) textbooks;
- (iii) fees charged by the educational institution;

(iv) tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution;

(v) salaries and related costs of instructors who are employees of the contractor; and

(vi) straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(c) (CWAS) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with fulltime education, including that provided at the contractor's own facilities, at a postgraduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which a bona fide employee is now working or may reasonably be expected to work, and are limited to a total period not to exceed one school year for each employee so trained. In unusual cases where required by military technology, the period may be extended.

(d) (CWAS) Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare bona fide employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence and travel. Costs allowable under this subparagraph do not include those for courses that are part of a degree oriented curriculum, which are allowable only to the extent set forth in (b) and (c) above.

(e) (CWAS) Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the contractor for training purposes are allowable to the extent set forth in 15-205.20, 15-205.9, and 15-205.34, respectively.

(f) (CWAS-NA) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

(g) Training and education costs in excess of those otherwise allowable under (b) and (c) above may be allowed to the extent set forth in an advance agreement negotiated pursuant to 15-107 (the limitation of 15-107(b) notwithstanding). To be considered for an advance agreement, the contractor must demonstrate that such costs are consistently incurred pursuant to an established engineering or scientific training and education program, and that the course or degree pursued is relative to the field in which a bona fide employee is now working or may reasonably be expected to work.

(h) (CWAS-NA) Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona fide employees are unallowable except that—

(i) such costs incurred for educating employee dependents (primary and secondary level students) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential provided for in 15-205.6(a)(1); or

(ii) when a contractor, prior to the effective date of this revision has had an employee dependent education plan providing for the college education of employees' dependents, the costs incurred under such plans for students already attending college under these plans will be allowable until such students have completed the equivalent of four academic years of study under the plan.

15-205.45 *Transportation Costs.* (CWAS) Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see 15-205.22). Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

15-205.46 *Travel Costs.*

(a) (CWAS) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by contractor personnel in a travel status while on official company business.

(b) (CWAS) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, *provided* the method used does not result in an unreasonable charge.

(c) (CWAS) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) (CWAS) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract in accordance with the principle of direct costing. (See 15-202.)

(e) (CWAS) Necessary, reasonable costs of family movements and personnel movements of a special or mass nature are allowable, subject to allocation on the basis of work or time period benefited when appropriate. (But see 15-107.)

(f) *Air Travel.* (CWAS-NA) The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as, where less than first-class accommodations would:

(i) require circuitous routing,
(ii) require travel during unreasonable hours,
(iii) greatly increase the duration of the flight,
(iv) result in additional costs which would offset the transportation savings,
(v) offer accommodations which are not reasonably adequate for the physical or medical needs of the traveler.

(g) *Travel Via Contractor-Owned, -Leased, and -Chartered Aircraft.* (CWAS)

(1) "Cost of contractor-owned, -leased, and -chartered aircraft," as that phrase is used herein, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs. This cost is allowable, if reasonable, to the extent the contractor can demonstrate that the

use of such aircraft is necessary for the conduct of his business and that the increase in cost, if any, in comparison with alternative means of transportation, is commensurate with the advantages gained.

(2) Some of the factors to consider in determining the necessity for such aircraft are whether:

(i) scheduled commercial airlines or other suitable less costly travel facilities are available at reasonable times, with reasonable frequency and serving the required destinations conveniently;

(ii) it is likely that critical or emergency situations might arise which could not be accommodated as effectively by scheduled commercial airline or other suitable less costly travel facilities;

(iii) the increased flexibility in scheduling would result in time savings and more effective utilization of key personnel;

(iv) national or industrial security demands privacy for key personnel who must work en route; and

(v) there exists a contract requirement for flight testing of equipment.

(3) When the need for contractor-owned, -leased or -chartered aircraft has been demonstrated, additional factors such as the following shall be considered in determining the reasonableness of costs.

(i) Number, type and size of aircraft needed (involved in this determination are matters such as the number and physical aspects of locations to which flights are required, distances to these locations, number of passengers to be carried and frequency of flights).

(ii) The appropriateness of the method of acquisition, *i.e.*, purchase, lease, or charter.

(iii) Whether, when the contractor has more than one type or size of aircraft, that available aircraft best suited to the requirements of each individual trip was used.

(4) Where the need for contractor-owned, -leased or -chartered aircraft has been demonstrated, optimum use of such aircraft, rather than scheduled commercial service, should be made where a cost advantage will result to the Government.

15-205.47 *Economic Planning Costs.*

(a) (CWAS) This category includes costs of generalized long-range management planning which is concerned with the future overall development of the contractor's business and which may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs do not include organization or reorganization costs covered by 15-205.23.

(b) (CWAS) Economic planning costs are allowable as indirect costs to be properly allocated.

(c) (CWAS-NA) Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this provision.

15-205.48 *Automatic Data Processing Equipment (ADPE) Leasing Costs.* (CWAS)

(a) This paragraph 15-205.48 is applicable to all leased ADPE, as defined in 1-201.29 (except as components of an end item to be delivered to the Government) acquired under "operating leases" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, promulgated by the Financial Accounting Standards Board (FASB). Compliance with 15-205.9(j) requires that ADPE acquired by means of "capital leases" as defined in the aforementioned (FAS-13) shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges. (Allowability of costs related to contractor-owned ADPE are governed by other provisions of this Part 2.)

(b)(1) If the contractor leased ADPE but cannot demonstrate, on the basis of the facts existent at the time of the decision to lease or to continue leasing and documented in accordance with (d) below, that leasing will result in less cost to the Government over the anticipated useful life (as those terms are explained in

(c) below), then rental costs are allowable only up to the amount that the contractor would be allowed had he purchased the ADPE.

(2) Furthermore, the costs of leasing ADPE are allowable only to the extent that the contractor can annually demonstrate in accordance with (d) below that such costs meet the criteria set forth in (i) through (iii) hereunder. The aforementioned requirement for an annual demonstration is applicable irrespective of whether the term of the lease was renewed or otherwise extended by the contractor.

(i) The costs are reasonable and necessary for the conduct of the contractor's business in light of such factors as the contractor's requirements for ADPE, costs of comparable facilities, the various types of leases available and the provisions of the rental agreement;

(ii) the costs do not give rise to a material equity in the facilities (such as an option to renew or purchase at a bargain rental or price) other than that normally given to industry at large but represent charges only for the current use of the equipment including but not limited to any incidental service costs such as maintenance, insurance, and applicable taxes; and

(iii) if the total cost of leasing the ADPE is to be allocated to one or more Government contracts, requiring the negotiation or determination of costs, or if the total cost of leasing ADPE in a single plant, division or cost center exceeds $500,000 per year and 50% or more of the total leasing cost is to be allocated to Government contracts, requiring the negotiation or determination of costs, the approval of the contracting officer was obtained for the leasing arrangement (see (d)(3) below, 15-107 and 3-1100). (CWAS-NA)

(3) Rental costs under a sale and leaseback arrangement shall be allowable only up to the amount the contractor would be allowed had he retained title to the ADPE.

(4) Rental costs of ADPE which is leased from any division, subsidiary, or organization under a common conrol shall be limited to the cost of ownership (including facilities capital cost of money, but excluding interest or other unallowable costs pursuant to Section XV, Part 2), except as provided in (b)(5) below.

(5) Rental costs of ADPE which is leased from any division, subsidiary or organization under a common control which has an established practice of leasing the same or similar equipment to unaffiliated lessees shall be allowed in accordance with (b)(1) and (2) above, except the purchase price for the purposes of (b)(1) above and costs of ownership for the purpose of (c)(2) below shall be determined in accordance with 15-205.22(e).

(c)(1) An estimate of the anticipated useful life of the property may represent the application life (utility in a given function), technological life (utility before becoming obsolete in whole or in part), or physical life utility before physically wearing out), depending upon the facts and circumstances and the particular facilities involved. Therefore, each case must be evaluated individually. In estimating anticipated useful life, the contractor may use the application life if he can clearly demonstrate that the facility has utility only in a given function and the duration of the function can be determined. Technological life may be used by the contractor if he can demonstrate that existing facilities must be replaced because of:

(i) specific program objectives or contract requirements which cannot be accomplished with the existing facilities;

(ii) cost reductions which will produce identifiable savings in production or overhead costs;

(iii) increase in workload volume which cannot be accomplished efficiently by modifying or augmenting existing facilities; or

(iv) consistent pattern of capacity operation (2 1/2-3 shifts) on existing facilities.

Technological advances per se will not justify replacement of existing facilities before the end of their physical life if such existing facilities will be able to satisfy future requirements or demands.

(2) In estimating the least cost to the Government for such useful life, the cumulative costs that would be allowed if the contractor owned the property should be compared with cumulative costs that would be allowed under any of the various types of leasing arrangements available. For the purposes of this comparison, the costs of ADPE exclude interest or other unallowable costs pursuant to Section XV, Part 2; they include but are not limited to the costs of operation, maintenance, insurance, depreciation, facilities capital cost of money, rental, and the cost of machine services, as applicable.

(d)(1) Except as provided in (3) below, the contractor's justification, under (b)(1) above, of his leasing decisions shall consist of but is not limited to the following supporting data, prepared prior to acquisition:

(i) analysis of utilization of existing ADPE;

(ii) application of the criteria in (b) above;

(iii) specific objectives or requirements, generally in the form of a data system study and data system specification;

(iv) solicitation of proposals from qualified sources based on the data system specification; and

(v) proposals received in response to the solicitation, and reasons for selection of the equipment chosen and for the decision to lease.

(2) Except as provided in (3) below, the contractor's annual justification, under (b)(2) above, of his decision to retain or change his existing ADPE capability and the need to continue leasing that capability shall consist of but is not limited to current data as specified in (i) through (iii) above.

(3) When a contractor's prospective ADPE lease cost equals or exceeds the thresholds specified in 15-205.48(b)(2)(iii), data in support of the initial decision to lease, under (b)(1) above, shall be furnished in accordance with 3-1100.3. If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year, and 50% or more of the total leasing cost is allocated to Government contracts requiring the negotiation or determination of costs, data in support of the annual justification, under (b)(2) above, for retention or change of existing ADPE capability and the need to continue leasing that capability shall also be furnished in accordance with 3-1100.3.

15-205.49 *Deferred Research and Development Costs* (CWAS-NA). As used herein, research and development refers to the type of technical effort which is described in 15-205.35(a) but which is sponsored by, or required in performance of, a contract or grant. Research and development costs (including amounts capitalized) which were incurred prior to the award of a particular contract are unallowable except when allowable as precontract costs (see 15-205.30). In addition, when costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, such excess may not be allocated as a cost to any other Government contract (see 15-205.19).

15-205.50 *Facilities Capital Cost of Money* (CWAS-NA).

(a) Facilities capital cost of money (Cost of Capital Committed to Facilities) is an imputed cost determined by applying a cost of money rate to facilities capital employed in support of Defense contracts. A cost of money rate is derived from a common source and uniformly imputed to all contractors. Capital employed is determined without regard to its source as between equity or borrowed capital. The resulting cost of money is an imputed cost and is not a form of interest on borrowings as discussed in 15-205.17.

(b) Facilities capital cost of money is allowable cost *provided* (i) the contractor's capital investment is measured, allocated to contracts, and costed in accordance with 3-1300, and (ii) the contractor maintains adequate records to demonstrate compliance with item (i).

(c) Cost of money for facilities capital need not be entered on the company's books of account. However, a memorandum entry of the cost shall be made. All relevant schedules, cost data and other data necessary to fully support the entry shall be maintained in a manner to permit audit and verification.

(d) Cost of money which is calculated, allocated and documented in accordance with these regulations shall be deemed an "incurred cost" for cost reimbursement purposes pursuant to the payment provisions of applicable cost type contracts. See E-509.5 re: applicability of cost of money for progress payment purposes under fixed-price contracts.

15-206 Notice of Intent to Disallow or Not Recognize Costs.

(a) *Purpose*. The clause entitled "*Notice of Intent to Disallow or Not Recognize Costs*" is a required clause for all cost-type contracts and fixed-price incentive contracts and contracts providing for price redetermination (*see 7-203.35*). A Notice of Intent to Disallow or Not Recognize Costs provides the basis under a contract for the contractor to appeal, prior to final settlement of costs of the contract, a determination of exception to costs either incurred or to be incurred. It thereby provides a vehicle for disputes to be settled in a more timely fashion.

(b) At any time during the performance of the contract, the cognizant contracting officer may issue a Notice of Intent to Disallow or Not Recognize Costs stating his intent to take exception to specific costs or portions thereof, under the contract. Usually, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs results from activities performed through monitorship of contractors' cost (*see Section XX, Part 10*), or or advice of auditors or technical personnel. Also, the decision to issue a Notice of Intent to Disallow or Not Recognize Costs shall only be made after discussion between the contracting officer and the contractor. The notice should be specific as to the type of cost to which exception is taken, the amount of such exception (if applicable), reasons for exception, applicable time period of the exception, and should reference the Notice o Intent to Disallow or Not Recognize Costs clause of the contract. When such notification involves elements of indirect costs, the approval of the contracting officer haveing authority for final settlement of overhead shall be obtained prior to issuance of of the notice except that a Corporate Administrative Contracting Officer (CACO) need not obtain the approval of local cognizant ACOs for items of corporate exepnse. When the Notice of Intent to Disallow Not Recognize Costs is issued, the originating contracting officer (CACO or ACO) will distribute information copies to all administrative contracting officers cognizant of that corporation. The notice will allow the contractor sixty days in which to contest the exception in writing and provide justification why the proposed expediture is justifiable and reasonable. The ACO will then consider the contractor's position and shall within sixty days either modify his original position or issue a decision in writing under the Disputes clause of the contract. When elements of indirect cost are involved, such decision will be rendered by the contacting officer with authority for final overhead settlement (*see 3-700*).

(c) As a minimum the Notice of Intent to Dissallow or Not Recognize Costs should contain the following information:

(i) contractor identification;
(ii) contract(s) affected;
(iii) description of cost exception(s);
(iv) estimated dollar value by item;
(v) reason(s) for the exception;
(vi) applicable time period(s) involved;
(vii) potential impact on billing rates and FPRAs;
(viii) effective date of notice;
(ix) provision for acknowledgment of receipt;
(x) date when formal reply must be received; and
(xi) recipients of copies of notice.

Part 3 - Principles for Determining Costs Applicable to Grants, Contracts, and Other Agreements With Educational Institutions

15-301 Purpose and Scope.

15-301.1 Objectives. This Part provides principles for determining the costs applicable to research and development, training, and other sponsored work performed by colleges and universities under grants, contracts, and other agreements with the Federal Government. These agreements are referred to as sponsored agreements.

15-301.2 Policy Guides. The successful application of these cost accounting principles requires development of mutual understanding between representatives of universities and of the Department of Defense as to their scope, implementation, and interpretation. It is recognized that-

(a) The arrangements for agency and institutional participation in the financing of a research, training, or other project are properly subject to negotiation between the agency and the institution concerned, in accordance with such Government-wide criteria or legal requirements as may be applicable.

(b) Each institution, posessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research and educational activities in a manner consonant with its own academic philosophies and institutional objectives.

(c) The dual role of students engaged in research and the resulting benefits to sponsored agreements are fundamental to the research effort and shall be recognized in the application of these principles.

(d) Each institution, in the fulfillment of its obligations, should employ sound management principles.

(e) The application of these cost accounting principles should require no significant changes in the generally accepted accounting practices of colleges and universities. However, the accounting practices of indivudual colleges and universities must support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to sponsored agreements.

(f) All agencies of the Department of Defense involved in negotiating indirect cost rates and auditing should assure that institutions are generally applying these cost accounting principles on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments should be fully considered during the rate negotiation and audit.

15-301.3 Application. These principles shall be used in determining the allowable costs of work performed by colleges and universities under sponsored agreements. The principles shall also be used in determining the costs of work performed by such institutions under subgrants, cost-reimbursement subcontracts, and other awards made to them under sponsored agreements. They also shall be used as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(a) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees of the institution.

(b) Capitation awards.

(c) Other awards under which the institution is not required to account to the Government for actual costs incurred.

15-302 Definition of Terms

15-302.1 Major functions of an institution refers to instruction (included departmental research), organized research, other sponsored activities, and other institutional activities as defined below:

(a) Instruction means the teaching and training activities of an institution. Except for research training as provided in (c) below, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a noncredit basis, and whether they are offered through regular academic departments or separate divisions, such as summer school division or an extension division.

(b) Departmental research means all research and development activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function of an institution but as a part of the instruction function of the institution.

(c) Organized research means all research and development activities of an institution that are separately budgeted and accounted for. This term includes research and development activities that are sponsored by the Federal and non-Federal agencies and organizations, as well as those that are separately budgeted by the institution under an internal allocation of institutional funds. It also includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities, and where such activities are not included in the instruction function. The costs of organized research and development activities include all costs incurred by the institution in performing the activities.

(d) Other sponsored activities means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects, and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as institutional activities.

(e) Other institutional activities means all activities of an institution: (i) instruction, departmental research, organized research, and other sponsored activities, as defined above; (ii) indirect cost activities identified in 15-306; and (iii) specialized service facilities described in 15-309.38. Other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxilary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to sponsored agreements, unless otherwise indicated in the agreements.

15-302.2 Sponsored agreement means any grant, contract, or other agreement between the institution and the Federal Government.

15-302.3 Allocation means the process of assigning a cost, or a group of costs, to one or more cost objective, in reasonable and realistic proportion to the benefit provided or other equitable relationship. A cost objective may be a major function of the institution, a particular service or project, a sponsored agreement, or an indirect cost activity, as described in 15-306. The process may entail assigning a cost(s) directly to a final cost objective or through one or more intermediate cost objectives.

15-303 Basic Considerations.

15-303.1 Composition of Total Costs. The cost of a sponsored agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in 15-303.5.

15-303.2 Factors Affecting Allowability of Costs. The tests of allowability of costs under these principles are: (i) they must be reasonable; (ii) they must be allocable to sponsored agreements under the principles and methods provided herein; (iii) they must be given consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (iv) they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types or amounts of cost items.

15-303.3 Reasonable Costs. A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are: (i) whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the sponsored aggrement; (ii) the restraints or requirements imposed by such factors as arm's length bargaining, Federal and State laws and regulations, and sponsored agreement terms and conditions; (iii) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (iv) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including sponsored agreements.

15-303.4 Allocable Costs.

(a) A cost is allocable to a particular cost objective (i.e., a specific function, project, sponsored agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a sponsored agreement if (i) it is incurred solely to advance the work under the sponsored agreement; (ii) it benefits both the sponsored agreement and other work of the institution in proportions that can be approximated through use of reasonable methods; or (iii) it is necessary to the overall operation of the institution and, in the light of the principles provided in this Part, is deemed to be assignable in part to sponsored projects. Where the purchase of equipment or other capital items is specifically authorized under a sponsored agreement, the amounts thus authorized for such purchases are assignable to the sponsored agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

(b) Any costs allocable to a particular sponsored agreement under the standards provided in this Part may not be shifted to other sponsored agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the sponsored agreement, or for other reasons of convenience.

15-303.5 Applicable Credits.

(a) The term "applicable credits" refers to those receipt or negative expenditures that operate to offset or reduct direct cost items. Typical examples of such transactions are: purchase discounts, rebates, or allowances: recoveries or indemnities on losses; and adjustments of over-payments or erroneous charges. This term also includes "educational discounts" on products or services provided specifically to educational institutions, such as discounts on computer equipment, except where the arrangement is clearly and explicitly identified as a gift by the vendor.

(b) In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to Government-sponsored agreements for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See 15-306.8, 15-309.9(a), and 15-309.38 for areas of potential application in the matter of direct Federal financing.)

15-303.6 Costs Incurred by State and Local Governments. Costs incurred or paid by State or local governments on behalf of their colleges and universities for fringe benefit programs, such as pension costs, FICA, and any other costs specifically incurred on behalf of and in direct benefit to the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of 15-303.1 through 15-303.5.

(b) The costs are properly supported by cost allocation plans in accordance with applicable Federal cost accounting principles.

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

15-303.7 Limitations on Allowance of Costs. Sponsored agreements may be subject to statutory requirements that limit tha allowance of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this Part, the amount not recoverable under a sponsored agreement may not be charged to other sponsored agreements.

15-304 Direct Costs.

15-304.1 General. Direct costs are those that can be identified specifically with a particular sponsored project, an instructional activity or any other institutional activity or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

15-304.2 Application to Sponsored Agreements. Identification with the sponsored work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of sponsored agreements. Typical costs charged directly to a sponsored agreement are the compensation of employees for performance of work under the sponsored agreement, including related fringe benefit costs to the extent they are consistently treated, in like circumstances, by the institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of the work; and other items of expense incurred for the sponsored agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of sponsored agreements provided such items are consistently treated, in like circumstances, by the institution as direct rather that indirect costs, and are charged under a recognized method of computing actual costs, and conform to generally accepted cost accounting practices consistently followed by the institution.

15-305 Indirect Costs.

15-305.1 General. Indirect costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. At educational institutions such costs normally are classified under the following indirect cost categories: depreciation and use allowances; general administration and general expenses; sponsored projects administration expenses; operation and maintenance expenses; library expenses; Departmental administration expenses; and student administration and services.

15-305.2 Criteria for Distribution

(a) Base Period. A base period for distribution of indirect costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

(b) Need for Cost Groupings. The overall objective of the indirect cost allocation process is to distribute the indirect costs described in 15-306 to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective groupings of cost within one or more of the indirect cost categories referred to in 15-305.1 above. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in (c) below. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in the light of the guides set forth in (d) below.

(c) General Considerations on Cost Groupings. The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgement to be determined on a case by case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within an indirect cost category include but are not limited to the following:

(i) Where certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expense should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in 15-305.2(b) and (d).

(ii) Where any types of expense ordinarily treated as general administration or Departmental administration are charged to sponsored agreements as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect costs allocable to those sponsored agreements and included in the direct cost of other activities for cost allocation purposes.

(iii) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(iv) Where activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(v) Where the institution elects to treat fringe benefits as indirect charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(vi) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

(d) Selection of Distribution Method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing indivudual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

(2) Where the cost grouping can be identified directly with the cost objective benefited, it should be assigned to that cost objective.

(3) Where the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distrubution of the costs. Such cost analysis studies may take into consideration weighting factors, population or space occupied if appropriate. Cost analysis studies, however, must (i) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (ii) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (iii) be statistically sound, (iv) be performed specifically at the institution at which the results are to be used, and (v) be reviewed periodically, but not less frequently than every two years, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained.

The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distuibution of the costs, the distribution shall be made in accordance with the appropriate base cited in 15-306, unless one of the following conditions is met: (i) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored agreements or (ii) the institution qualifies for, and elects to use, the simplified method for computing indirect cost rates described in 15-308.7.

(e) Order of Distribution.

(1) Indirect cost categories consist of depreciation and use allowance, operation and maintenance, general administration and general expenses, departmental administration, sponsored projects administration, library, and student administration and services, as described in 15-306.

(2) Depreciation and use allowances, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in (3) below, this order of allocation does not apply.

(3) Normally an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories described in 15-306 is required.

15-306 Identification and Assignment of Indirect Costs.

15-306.1 Depreciation and Use Allowances.

(a) The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with 15-309.

(b) In the absence of the alternatives provided for in 15-305.2(d), the expenses included in this category shall be allocated in the following manner:

(i) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings shall be assigned to that function.

(ii) Depreciation or use allowances on buildings, used for more than one function, and on capital improvements and equipment used in such buildings shall be allocated to the individual functions performed in each building on the basis of unusable square feet of space, excluding common areas such as hallways, stairwells, and restrooms.

(iii) Depreciation or use allowances on buildings and capital improvements where space is used jointly, and on equipment used jointly, shall be allocated to benefiting functions in proportion to the total salaries and wages applicable to the joint function.

(iv) Depreciation or use allowances on buildings, capital improvements, and equipment used predominantly for one function and only incidentally for other(s) may be assigned to the function in which it is used predominantly.

(v) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category shall be assigned to the instruction function of the institution. The amount allocated to the employee category shall be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

15-306.2 Operation and Maintenance Expenses.

(a) The expenses under this heading are those that have been incurred by a central service organization or at the Departmental level for the administration, supervision, operation, maintenance, preservation and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expense category should also include fringe benefits costs applicable to the salaries and wages included therein, and depreciation and use allowance.

(b) In the absence of the alternatives provided for in 15-305.2(d), the expenses included in this category shall be allocated in tha same manner as described in 15-306.1(b) for depreciation and use allowances.

15-306.3 General Administration and General Expenses.

(a) The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution, i.e., solely to (i) instruction; (ii) organized research; (iii) other sponsored activities; or (iv) other institutional activities. The general administration and general expense category should also include the fringe benefit costs applicable to the salaries and wages included therein, and appropriate share of operation and maintenance expense, and depreciation and use allowances.

(b) In the absence of the alternatives provided for in 15-305.2(d), the expenses includes in this category shall be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to serviced or benefited functions on the modified total cost basis. Modified total costs consist of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. When an activity included in this indirect cost category provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

15-306.4 Departmental Administration Expenses.

(a) The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research institutes, study centers, and research center. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

a. The salaries of the heads of academic departments, divisions, and organized research units are limited to amounts attributable to their administrative duties. Salaries of professorial or professional staff, whose appointment or assignment require administrative work that benefits sponsored projects, may also be included to the extent that the portion so charged is clearly and specifically supported as required in 15-309.6.

b. Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in (1) and (2) above are allowable, as well as an appropriate share of general administration and general expenses, and depreciation and/or use allowances.

(b) In the absence of the alternatives provided for in 15-305.2(d), the expenses included in this category shall be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school shall be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of expenses allocated in (1) above shall be allocated to the appropriate functions of the department on the modified total cost basis.

15-306.5 Sponsored Projects Administration

(a) The expenses under this heading are those that have been incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and Non-Federal), special security, purchasing, personnel administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, his assistants, and their immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the orgainzation, such as stock rooms, stenographic pools, and the like. The salaries of professorial or professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to sponsored agreements administration is clearly identified and supported as required by 15-309.6. This category should also include the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, the operation and maintenance expenses, and depreciation and use allowance. Appropriate adjustments should be made for services provided to other functions or organizations.

(b) In the absence of the alternatives provided for in 15-305.2(d), the expenses included in this category shall be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

(c) An appropriate adjustment shall be made to eliminate any duplicate charges to sponsored agreements when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect cost items, such as accounting, procurement, or personnel administration.

15-306.6 Library Expenses.

(a) The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under 15-303.5. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation and use allowances. Costs incurred in the purchases of rare books (museum-type books) with no value to sponsored agreements should not be allocated to them.

(b) In the absence of the alternatives provided for in 15-305.2(d), the expenses included in this category shall be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category shall consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category shall consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis.

(3) The other users category shall consist of all other users of library facilities.

(c) Amounts allocated in (b) above shall be assigned further as follows:

(1) The amount in the student category shall be assigned to the instruction function of the institution.

(2) The amount in the professional employee category shall be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category shall be assigned to the other institutional activities function of the institution.

15-306.7 Student Administration and Services.

(a) The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to 15-309.6. This expenses category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, and use allowances and/or depreciation.

(b) In the absence of the alternatives provided for in 15-305.2(d), the expenses in this category shall be allocated to the instruction function, and subsequently to sponsored agreements in that function.

15-306.8 Offset for Indirect Expenses Otherwise Provided for by the Government.

(a) The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in 15-306.1 through 15-306.7.

(b) The items in this group shall be treated as a credit to the affected individual indirect cost category before that category is allocated to benefiting functions.

15-307 Determination and Application of Indirect Cost Rate or Rates.

15-307.1 Indirect Cost Pools.

(a) Subject to (b) below, the separate categories of indirect costs allocated to each major function of the institution as prescribed in 15-306 shall be aggregated and treated as a a common pool for that function. The amount in each pool shall be divided by the distribution base described in 15-307.2 below to arrive at a single indirect cost rate for each function. The rate for each function is used to distribute indirect costs to individual sponsored agreements of that function. Since a common pool would be established for each major function of the institution, a separate indirect cost rate would be established for each of the major functions described in 15-302.1 under which sponsored agreements are carried out.

(b) In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of sponsored agreements in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the regular course of the rate determination process and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (i) such indirect cost rate differs significantly from that which would have been obtained under (a) above, and (ii) the volume of work to which such rate would apply is material in relation to other sponsored agreements at the institution.

15-307.2 The Distribution Base. Indirect costs shall be distributed to applicable sponsored agreements on the basis of modified total direct costs, consisting of salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to $25,000 each. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to 15-307.1, above. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the modified total direct costs identified with such pool. Other bases may be used where it can be demonstrated that they produce more equitable results.

15-307.3 Negotiated Lump Sum for Indirect Costs. A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect services cannot be readily determined. Such negotiated

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indirect costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

15-307.4 Predetermined Fixed Rates for Indirect Costs. Public Law 87-638 (76 Stat. 437) authorized the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgement as to the probable level of indirect costs during the ensuing accounting period.

15-307.5 Negotiated Fixed Rates and Carryforward Provisions. When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined, the carryforward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to sponsored agreements for the forecast period, plus or minus the carryforward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under the lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

15-308 Simplified Method for Small Institutions.

15-308.1 General.

(a) Where the total direct cost of work covered by this Part at an institution does not exceed $3 million in a fiscal year, the use of the simplified procedure described in 15-308.2, below, may be used in determining allowable indirect costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information with salaries and wages segregated from other costs will be utilized as a basis for determining the indirect cost rate applicable to all sponsored agreements.

(b) The simplified procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

15-308.2 Simplified Procedure.

(a) Establish the total amount of salaries and wages paid to all employees of the institution.

(b) Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalent:

(i) General administration and general expense (exclusive of costs of student administration and services, student aid, student activities, and scholarships).

(ii) Operation and maintenance of physical plant; and depreciation and use allowances; after appropriate adjustment for costs applicable to other institutional activities.

(iii) Library.

(iv) Department administration expenses, which will be computed as 20% of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under (i) above have previously been allocated to "other institutional activities," they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect pool must be separately identified.

(c) Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in (a) the amount of salaries and wages included under (b) above.

(d) Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool, (b) above, by the amount of the distribution base, (c) above.

(e) Apply the indirect cost rate to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

15-309 General Provisions for Selected Items of Cost. 15-309.1 through 15-309.44 provide principles to be applied in establishing the allowability of certain items involved in determining cost. These principles should apply regardless of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost. In case of discrepancy between the provisions of a specific sponsored agreement and the provisions below, the agreement should govern.

15-309.1 Advertising Costs.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

(b) The only advertising costs allowable are those which are solely for (i) the recruitment of personnel required for the performance by the institution of obligations arising under the sponsored agreement, when considered in conjunction with all other recruitment costs, as set forth in 15-309.32; (ii) the procurement of goods and services for the performance of the sponsored agreement; (iii) the disposal of scrap or surplus materials acquired in the performance of the sponsored agreement except when institutions are reimbursed for disposal costs at a predetermined amount in accordance with Attachment N, OMB Circular No. A-110; or (iv) other specific purposes necessary to meet the requirements of the sponsored agreement.

(c) Costs of this nature, if incurred for more than one sponsored agreement or for both sponsored work and other work of the institution, are allowable to the extent that the principles in 15-304 and 15-305 are observed.

15-309.2 Bad Debts. Any losses, whether actual or estimated, arising from uncollectible accounts and other claims, related collection costs, and related legal costs are unallowable.

15-309.3 Civil Defense Costs. Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in 15-309.9. Costs of local civil defense projects not on the institution's premises are unallowable.

15-309.4 Commencement and Convocation Costs. Costs incurred for commencements and convocations are unallowable, except as provided for in 15-306.9.

15-309.5 Communication Costs. Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

15-309.6 Compensation for Personal Services.

(a) General. Compensation for personal services covers all amounts paid currently or accrued by the institution for services rendered during the period or performance under government sponsored agreements. Such amounts include salaries, wages, and fringe benefits (see 15-309.15). These costs are allowable to the extent that the total compensation to individual employees conforms to the established policy of the institution, consistently applied, and provided that the charges for work performed directly on sponsored agreements and for other work allocable as indirect costs are determined and supported as provided below. Charges to sponsored agreements may include reasonable amounts for activities contributing and intimately related to work under the agreements, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences. Incidental work (that in excess of normal for the individual), for which supplemental compensation is paid by an institution under institutional policy, need not be included in the payroll distribution systems described below, provided such work and compensation are separately identified and documented in the financial management system of the institution.

(b) Payroll Distribution. For each organizational unit of an institution, the distribution of salaries and wages of professorial or professional staff (whether charged direct or required to be distributed to more than one activity for purposes of allocating indirect costs) will be based on either a system of monitored workload or a system of personnel activity reports. The latter system will be used for nonprofessional employees whose costs are charged directly or are required to be distributed to more than one activity for purposes of allocating indirect costs. In the use of either method, it is recognized that, because of the nature of work involved in academic institutions, the various and often interrelated activities of professorial and professional employees frequently cannot be measured with a high degree of precision, that reliance must be placed on reasonably accurate approximations, and that acceptance of a degree of tolerance in measurement is appropriate.

(c) Monitored Workload. Under this method, the distribution of salaries and wages applicable to sponsored agreements is based on budgeted or assigned workload, updated to reflect any significant changes in workload distributions. A monitored workload system used for salaries and wages charged directly or indirectly to sponsored agreements will meet the following standards:

(1) A system of budgeted or assigned workload will be incorporated into the official records of the institution and encompass both sponsored and all other activities on an integrated basis. The system may include the use of subsidiary records.

(2) The system will reasonably reflect workload of employees, accounting for 100 percent of the work for which the employee is compensated and which is required in fulfillment of the employee's obligations to the institution. Because practices vary among institutions and within institutions as to the total activity constituting a full workload --when expressed in measurable units, such as contact hours in teaching--the system will be based on a determination for each individual, reflecting the ratio of each of the activities which comprise the total workload of the individual. (But see 15-308 for treatment of indirect costs under the simplified method for small institutions.)

(3) The system will provide for modification of an individual's salary or salary distribution commensurate with any significant change in the employee's workload or the ratio of activities comprising the total workload. A significant change in an employee's workload shall be considered to include the following as a minimum: when work begins or ends on a sponsored agreement, when a teaching load is materially modified, when additional unanticipated assignments are received or taken away, when an individual begins or ends a sabbatical leave, prolonged sick leave, or leave without pay, etc. Short-term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term such as an academic period. Whenever it is apparent that a change in workload will occur or has occurred, the change will be documented over the signature of a responsible official and, if significant, entered into the system.

(4) The system will utilize workload categories reflecting activity which is applicable to each sponsored agreement, each indirect cost activity, and each major function of the institution.

(5) At least annually a statement will be signed by the employee, principal investigator, or responsible official, having first hand knowledge of the work stating that salaries and wages charged to sponsored agreements as direct charges, or that salaries and wages charged to both direct and indirect cost categories, or to more than one indirect cost category are reasonable.

(6) The system will provide for independent internal evaluations to insure that it is working effectively.

(7) In the use of this method, an institution shall not be required to provide additional support or documentation for the effort actually performed, but is responsible for assuring that the system meets the above standards.

(d) Personnel Activity Reports. Under this system, the distribution of salaries and wages will be supported by personnel activity reports as prescribed below.

(1) Personnel activity reports will reflect the distribution of activity expended by each employee covered by the system.

(2) The reports will reflect an after-the-fact reporting of the percentage of activity of each employee. Charges may be made initially on the basis of estimates made before the services are performed, provided that such charges are promptly adjusted if significant differences are indicated by activity reports.

(3) Each report will account for 100 percent of the activity for which the employee is compensated and which is required in fulfillment of the employee's obligations to the institution. The report will reasonably reflect the percentage of activity applicable to each sponsored agreement, each indirect cost category, and each major function of the institution.

(4) To confirm that the distribution of activity represents a reasonable estimate of the work performed by the employee during the period, each report will be signed by the employee or by a responsible official having first hand knowledge of the work performed.

(5) For professorial and professional staff, the reports will be prepared each academic term, but no less frequently than every six months. For other individuals, the reports will be prepared no less frequently than monthly and will coincide with one or more pay periods.

(6) Where the institution uses time cards or other forms of after-the-fact payroll documents as original documentation for payroll and payroll charges, such documents shall qualify as a personnel activity report provided that they meet the requirements in (1) through (5) above.

(e) Salary Rates for Faculty Members.

(1) Salary Rates for the Academic Year. Charges for work performed on sponsored agreements by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the policy of the institution concerned, constitutes the basis of his salary. Charges for work performed on sponsored agreements during all or any portion of such period are allowable at the base salary rate. In no event will charges to sponsored agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period. This principle applies to all members of the faculty at an institution. Since intra-university consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to faculty members who function as consultants or otherwise contribute to a sponsored agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided that such consulting arrangements are specifically provided for in the agreement or approved in writing by the sponsored agency.

(2) Periods Outside the Academic Year.

a. Except as otherwise specified for teaching activity in b below, charges for work performed by faculty members on sponsored agreements during the summer months or other period not included in the base salary period will be determined for each faculty member at a rate not in excess of the base salary divided by the period to which the base salary relates, and will be limited to charges made in accordance with other parts of this section. The base salary period used in computing charges for work performed during the summer months will be the number of months covered by the faculty member's official academic year appointment.

b. Charges for teaching activities performed by faculty members on sponsored agreements during the summer months or other periods not included in the base salary period will be based on the normal policy of the institution governing compensation to faculty members for teaching assignments during such periods.

(3) Part-Time Faculty. Charges for work performed on sponsored agreements by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for the part-time assignments: e.g., an institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time to a sponsored agreement. Thus, his additional compensation, chargeable by the institution to the agreement, would be one-half of $5,000, or $2,500.

(f) Noninstitutional Professional Activities. Unless an arrangement is specifically authorized by a Federal sponsoring agency, an institution must follow its institution-wide policies and practices concerning the permissible extent of professional services that can be provided outside the institution for noninstitutional compensation. Where such institution-wide policies do not exist or do not adequately define the permissible extent of consulting or other noninstitutional activities undertaken for extra outside pay, the Government may require that the effort of professional staff working on sponsored agreements be allocated between (i) institutional activities, and (ii) noninstitutional professional activities. If the sponsoring agency considers the extent of noninstitutional professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

15-309.7 Contingency Provisions. Contributions to a contingency reserve or any similar provision made for events, the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. (But see also 15-309.16(c).)

15-309.8 Deans of Faculty and Graduate Schools. The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs are allowable.

15-309.9 Depreciation and Use Allowances. Institutions may be compensated for the use of their buildings, capital improvements, and equipment; provided that they are used, needed in the institution's activities, and properly allocable to sponsored agreements. Such compensation shall be made by computing either depreciation or use allowance. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not computed. The allocation for depreciation or use allowance shall be made in accordance with 15-306.1. Depreciation and use allowances are computed applying the following rules:

(a) The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. For this purpose, the acquisition cost will exclude (i) the cost of land; (ii) any portion of the cost of buildings and equipment borne by or donated by the Government, irrespective of where title was originally vested or where it is presently located; and (iii) any portion of the cost of buildings and equipment contributed by or for the institution where law or agreement prohibit recovery. For an asset donated to the institution by a third party, its fair market value at the time of the donation shall be considered as the acquisition cost.

(b) In the use of the depreciation method, the following shall be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency.

(3) Where the depreciation method is introduced for application to assets for which use allowance was previously charged, the aggregate amount of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets.

(4) When the depreciation method is used for buildings, a building "shell" may be treated separately from other building components, such as plumbing system and heating and air-conditioning system. Each component item may then be depreciated over its estimated useful life. On the other hand, the entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life.

(5) Where the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that have outlived their depreciable lives. (But see also (c)(3) below.)

(c) Under the use allowance method, the following shall be observed:

(1) The use allowance for buildings and improvements (including improvements such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost.

(2) In contrast to the depreciation method, the entire building must be treated as a single asset without separating its "shell" from other building components under the use allowance method. The entire building must be treated as a single asset, and the two-percent use allowance limitation must be applied to all parts of the building. The two-percent limitation, however, need not be applied to equipment or other assets that are merely attached or fastened to the building but not permanently fixed and are used as furnishings, decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwasher, and carpeting). Such equipment and assets will be considered as not being permanently fixed to the building if they can be removed without the need for costly or extensive alterations or repairs to the building to make the space usable for other purposes. Equipment and assets which meet these criteria will be subject to the six and two-thirds percent equipment use allowance.

(3) A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated after taking into consideration the amount of depreciation previously charged

to the Government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

(d) Except as otherwise provided in (b) and (c) above, a combination of the depreciation and use allowance methods may not be used, in like circumstances, for a single class of assets (e.g., buildings, office equipment, and computer equipment).

(e) Charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, when the depreciation method is used, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

15-309.10 Donated Services and Property. The value of donated services and property are not allowable, either as a direct or indirect cost, except that depreciation or use allowances on donated assets are permitted in accordance with 15-309.9(a). The value of donated services and property may be used to meet cost sharing or matching requirements, in accordance with OMB Circular No. A-110.

15-309.11 Employee Morale, Health, and Welfare Costs and Credits. The costs of house publication, health or first-aid clinics and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

15-309.12 Entertainment Costs. Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

15-309.13 Equipment and Other Capital Expenditures.

(a) For purposes of this paragraph, the following definitions apply:

(1) Equipment means an article of nonexpendable tangible personal property having a useful life of more than two years, and an acquisition cost of $500 or more per unit. However, consistent with institutional policy, lower limits may be established.

(2) Capital expenditure means the cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxilary apparatus necessary to make it usable for the purpose for which it is acquired. Ancilliary charges, such as taxes, duty, protective intransit insurance, freight, and installation, may be included in, or excluded from, capital expenditure cost in accordance with the institution's regular accounting practices.

(3) Special purpose equipment means equipment which is used only for research, medical, scientific, or other technical activities.

(4) General purpose equipment means equipment, the use of which is not limited only to research, medical, scientific or other technical activities. Examples of general purpose equipment include office equipment and furnishings, air-conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

(b) The following rules of allowability shall apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and the land are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(2) Capital expenditures for special purpose equipment are allowable as direct charges, provided that the acquisition of items having a unit cost of $1,000 or more is approved in advance by the sponsoring agency.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as direct charges, except where approved in advance by the sponsoring agency.

(4) Capital expenditures are unallowable as indirect costs, but see 15-309.9 for allowability of depreciation or use allowance on buildings, capital improvements, and equipment. Also see 15-309.33 for allowability of rental costs on land, buildings, and equipment.

15-309.14 Fines and Penalties. Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the sponsored agreement or instructions in writing from the contracting officer or equivalent.

15-309.15 Fringe Benefits.

(a) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable, provided such costs are distributed to all institutional activities in proportion to the relative amount of time or effort actually devoted by the employees. See 15-309.35 for treatment of sabbatical leave.

(b) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, tuition or remission of tuition for individual employees or their families and the like are allowable, provided such benefits are granted in accordance with established institutional policies, and are distributed to all institutional activities on an equitable basis. See 15-309.36(b) for treatment of tuition remission provided to students.

(c) Rules for pension plan costs are as follows:

(1) Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided (i) such policies meet test of reasonableness; (ii) the methods of cost allocation are equitable for all activities; (iii) the amount of pension cost assigned to each fiscal year is determined in accordance with (2) below; and (iv) the cost assigned to a given fiscal year is paid or funded for all plan participants within six months after the end of that year.

(2) The amount of pension cost assigned to each fiscal year shall be determined in accordance with generally accepted accounting principles. Institutions may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Cost" (4 CFR Part 412).

(3) Premiums paid for pension plan termination insurance pursuant to the Employee Retirement Income Security Act of 1974 (Public Law 93-406) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and prohibited transactions of pension plan fiduciaries imposed under the Employee Retirement Income Security Act are also unallowable.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of the salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, if the costs in relationship to salaries and wages differ significantly for different groups of employees. Also fringe benefits related to institutional salaries and wages treated as direct costs may be treated as direct costs.

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15-309.16 Insurance and Indemnification.

(a) Costs of insurance required or approved, and maintained, pursuant to the sponsored agreement, are allowable.

(b) Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (i) types and extent and cost of coverage must be in accordance with sound institutional practice; (ii) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (iii) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

(c) Contributions to a reserve for a self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

(d) Actual losses which could have been covered by permissible insurance whether through purchased insurance or self-insurance are unallowable, unless expressly provided for in the sponsored agreement except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools, which occur in the ordinary course of operation, are allowable.

(e) Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the sponsored agreement, except as provided in (d) above.

15-309.17 Interest, Fund Raising, and Investment Management Costs.

(a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital contributions, are unallowable.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(d) Costs related to the physical custody and control of monies and securities are allowable.

15-309.18 Labor Relations Costs. Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employee's publications, and other related activities, are allowable.

15-309.19 Losses on Other Sponsored Agreements or Contracts. Any excess of costs over income under any other sponsored agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any underrecoveries through negotiation of flat amounts for indirect costs.

15-309.20 Maintenance and Repair Costs. Costs incurred for necessary maintenance, repair, or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

15-309.21 Material Costs. Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the sponsored agreement are allowable. Purchases made specifically for the sponsored agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the sponsored agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the sponsored agreement. Where Government donated or furnished material is used in performing the sponsored agreement, such material will be used without charge.

15-309.22 Memberships, Subscriptions, and Professional Activity Costs.

(a) Costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

(b) Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

(c) Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

15-309.23 Patent Costs. Costs of preparing disclosures, reports, and other documents required by the sponsored agreement, and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the sponsored agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also 15-309.34.)

15-309.24 Plant Security Cost. Necessary expenses incurred to comply with security requirements, including wages, uniforms and equipment of personnel engaged in plant protection, are allowable.

15-309.25 Preagreement Costs. Costs incurred prior to the effective date of the sponsored agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless approved by the sponsoring agency.

15-309.26 Professional Services Costs.

(a) Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to (b) and (c) below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(b) Factors to be considered in determining the allowability of costs in a particular case include (i) the past pattern of such costs, particularly in the years prior to the award of sponsored agreements; (ii) the impact of sponsored agreements on the institution's total activity; (iii) the nature and scope of managerial services expected of the institution's own organizations; and (iv) whether the proportions of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under sponsored agreements.

(c) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored agreements.

15-309.27 Profits and Losses on Disposition of Plant, Equipment, or Other Capital Assets. Profits or losses arising from the sale or exchange of plant, facilities, equipment or other capital assets, including sale or exchange of either short-term or long-term investments, shall not be considered in computing the costs of sponsored agreements except for pension plans as provided in 15-309.15(c). When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds shall be made in accordance with Attachment N, OMB Circular No. A-110.

15-309.28 Proposal Costs. Proposal costs are the costs of preparing bids or proposals on potential Government and non-Government sponsored agreements or projects, including the development of data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable to the current period. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

15-309.29 Public Information Services Costs. Costs of news releases pertaining to specific research or scientific accomplishment are allowable, when they result from performance of sponsored agreements.

15-309.30 Rearrangement and Alteration Costs. Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency.

15-309.31 Reconversion Costs. Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of the sponsored agreement, fair wear and tear excepted, are allowable.

15-309.32 Recruiting Costs.

(a) Subject to (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

(c) Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances, incurred to attract professional personnel from other institutions, that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Government.

15-309.33 Rental Cost of Buildings and Equipment.

(a) Rental costs of buildings or equipment are allowable to the extent that the decision to rent or lease is in accord with 15-303.3. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would be allowed if the institution continued to own the property.

(c) Rental costs under "less-than-arms-length" leases are allowable only up to the amount that would be allowed if the institution owned the property. For this purpose, a "less-than-arms-length" lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other.

(d) Where significant rental costs are incurred under leases which create a material equity in the leased property, they are allowable only up to the amount that would be allowed if the institution purchased the property on the date the lease agreement was executed. For this purpose, a material equity in the property exists when the lease:

(1) in noncancelable or is cancelable only upon the occurrence of some remote contingency, and

(2) has one or more of the following characteristics:

a. Title to the property passes to the institution at some time during or after the lease period.

b. The term of the lease corresponds substantially to the estimated useful life of the property (i.e., the period of economic usefulness to the legal owner of the property).

c. The initial term is less than the useful life of the property and the institution has the option to renew the lease for the remaining useful life at substantially less than fair rental value.

d. The property was acquired by the lessor to meet the special needs of the insitution and will probably be usable only for that purpose and only by the institution.

e. The institution has the right, during or at the expiration of the lease, to purchase the property at a price which at the inception of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property (commonly called a lease with a bargain purchase option), except for any discount normally given to educational institutions.

15-309.34 Royalties and Other Costs for Use of Patents. Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the sponsored agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

15-309.35 Sabbatical Leave Costs. Costs of leave of absence to employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the institution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

15-309.36 Scholarships and Student Aid Costs.

(a) Costs of scholarships, fellowships, and other programs of student aid are allowable only when the purpose of the sponsored agreement is to provide training to selected participants and the charge is approved by the sponsoring agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that (i) there is a bonafide employer-employee relationship between the student and the institution for the work performed, (ii) the tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of the necessary work, and (iii) it is the institution's practice to similarly compensate students in nonsponsored as well as sponsored activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages shall be subject to the reporting requirements stipulated in 15-309.6, and shall be treated as direct or indirect cost in accordance with actual work being performed. Tuition remission may be charged on an average rate basis.

15-309.37 Severance Pay.

(a) Severance pay is compensation in addition to regular salaries and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

(b) Severance payments that are due to normal, recurring turnover and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

(c) Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

15-309.38 Specialized Service Facilities.

(a) The costs of institutional services involving the use of highly complex or specialized facilities such as electronic computers, wind tunnels, and reactors, are allowable, provided the charge for the service meets the conditions of (b) through (d) below.

(b) The cost of each service normally shall consist of both its direct costs and its allocable share of indirect costs with deductions for appropriate income or Federal financing as described in 15-303.5.

(c) The cost of such institutional services when material in amount will be charged directly to users, including sponsored agreements based on actual use of the services and a schedule of rates that does not discriminate between federally and nonfederally supported activities of the institution, including those used by the institution for internal purposes. Charges for the use of specialized facilities should be designed to recover not more than the aggregate cost of the services over a long-term period agreed to by the institution and the cognizant Federal agency. Accordingly, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year as long as rates are reviewed periodically for consistency with the long-term plan and adjusted if necessary.

(d) Where the costs incurred for such institutional services are not material, they may be allocated as indirect costs. Such arrangements must be agreed to by the institution and the cognizant Federal agency.

(e) Where it is in the best interest of the Government and the institution to establish alternative costing arrangements, such arrangements may be worked out with the cognizant Federal agency.

15-309.39 Special Services Costs. Costs incurred for general public relations activities, alumni activities, and similar services, are unallowable.

15-309.40 Student Activity Costs. Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the sponsored agreements.

15-309.41 Taxes.

(a) In general, taxes which the institution is required to pay and which are paid or accrued with generally accepted accounting principles, are allowable. Payments make to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and (ii) special assessments on land which represent capital improvements.

(b) Any refund of taxes, interest, or penalties, and any payment to the institution thereon, attributable to taxes, interest, or penalties which were allowed as sponsored agreement costs, will be credited or paid to the Government in the manner directed by the Government. However, any interest actually paid or credited to an institution incident to a refund of tax, interest and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

15-309.42 Transportation Costs. Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the sponsored agreement should be treated as a direct cost.

15-309.43 Travel Costs.

(a) Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

(b) Travel costs are allowable subject to (c), (d), (e), and (f) below, when they are directly attributable to specific work under a sponsored agreement or are incurred in the normal course of administration of the institution or a department or sponsored program thereof.

(c) The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(d) Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

(e) Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreigh trip must be specifically approved. For purposes of this provision, foreigh travel is defined as "any travel outside of Canada and the United States and its territories and possessions." However, for an organization located outside Canada and the United States and its territories and possessions, foreign travel means travel outside that country.

(f) Domestic travel costs are allowable when permitted by the sponsored agreement. Expenditures for such travel will not be allowed if they exceed the amount specified by more than 25% or $500, whichever is greater, except with an advanced approval of the sponsoring agency.

15-309.44 Termination Costs Applicable to Sponsored Agreements.

(a) Termination of sponsored agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of the Part in the case of termination.

(b) The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(c) If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Part, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

(d) Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided (i) such special tooling, machinery, or equipment is not reasonably capable of use in other work of the institution; (ii) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (iii) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

(e) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (ii) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

(f) Settlement expenses including the following are generally allowable: (i) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (ii) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement, except when the institution is reimbursed for disposals at a predetermined amount in accordance with the provisions of Circular No. A-110.

(g) Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

15-310 Certification of Charges. To assure that expenditures for sponsored agreements are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads essentially as follows: "I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the provisions of the application and award documents."

CONTRACT COST PRINCIPLES AND PROCEDURES

Part 4—Construction and Architect-Engineer Contracts

15-400 Scope of Part. This Part prescribes general principles and procedures for the evaluation and determination of costs in connection with contracts and subcontracts for construction and architect-engineer services related to construction. The applicability of this Part to cost reimbursement and fixed price type contracts is set forth in 15-104 of this Section. In addition, because of the unique nature of certain aspects of construction contracts, guidance is provided with respect to some elements of cost wherein the basis for determination of cost under cost reimbursement type contracts differs from that used for evaluation of cost under fixed price type contracts.

15-401 Basic Considerations.

15-401.1 *Applicable Cost Principles.* Except as otherwise provided in this Part 4, because of the specialized nature of construction and architect-engineer contracts, the allowability of costs shall be determined in accordance with Part 2 of this Section, except to the extent that the provisions of that Part are clearly inappropriate to such contracts.

15-401.2 *Special Factors Affecting the Allowability of Costs.* The scope of the work required may vary from routine projects of short duration to be performed within the contractor's home office locality to the erection of complex military installations at remote overseas locations over a period of several years. Climate and terrain may vary greatly among construction sites. All of these factors involving the nature, size, duration and location of a construction project generally affect the basic determination of the Government as to the type of contract to be awarded and the operating practices, techniques and procedures employed by the contractor, particularly with respect to the incurrence of the selected costs set forth in 15-402.1 and 15-402.3. Advance understandings as set forth in 15-107, for such items as home office overhead, partner's compensation, employment of consultants, and equipment usage, are particularly important in construction and architect-engineer contracts in order to assure complete understanding of the parties and avoid possible subsequent disputes or disallowances.

15-402 Selected Costs.

15-402.1 *Construction Plant and Equipment.*

(a) The widely varying conditions of climate, terrain, etc. applicable to individual Government construction projects make it impracticable to determine accurately the actual costs of depreciation of construction plant and equipment used on individual contracts. In addition, in certain cases it may be extremely difficult to determine or allocate accurately the cost of overhaul or repairs applicable in an individual contract since the period of incidence of such cost may not correspond with the period of benefit derived therefrom. Therefore, predetermined rates covering depreciation, and where appropriate overhaul and repair costs, shall be used to provide equitable average compensation to contractors for the use of construction plant and equipment under Government contracts. The rate schedule referred to in subparagraph (c), published by the Associated General Contractors of America, Inc., is generally appropriate to the types of construction projects awarded under fixed price type contracts. Accordingly, unless the contract specifically provides to the contrary, usage costs for construction plant and equipment under cost reimbursement type contracts and fixed price type contracts shall be determined as provided in subparagraphs (b) and (c), respectively.

(b) Allowable costs for construction plant and equipment in sound workable condition owned or controlled and furnished by a contractor or subcontractor with the approval of the contracting officer for use under cost reimbursement type contracts shall be the subject of an advance understanding as set forth in 15-107 with respect to (i) depreciation, overhead and profit, and (ii) the costs incident to major, minor and running repairs, complete and thorough overhaul, and, loss or destruction of equipment.

(c) Evaluation of costs for the use of construction plant and equipment, in sound and workable condition, which are owned or controlled by a contractor or subcontractor and are furnished or the proper and economical performance of a fixed-price type contract shall be based upon the "Contractors' Equipment Ownership Expense Schedule" Sixth Edition, 1966, published by the Associated General Contractors of America, Inc. This represents a percentage of acquisition cost per working month or fraction thereof for the period of time the equipment is required for the job. If the equipment has already exceeded the assigned service life indicated by the percentage used for depreciation, one year shall be added to the actual age of the equipment and the depreciation percentage shall be revised accordingly. The allowance for equipment ownership expense, computed as provided herein shall be considered to include all costs of depreciation, major repairs and overhaul, and overhead applicable to the equipment. Accordingly, there shall be eliminated from all direct and indirect charges under the contract all costs applicable to items of equipment which are included in the allowance for ownership expense. In considering total costs under any contract, no allowance for overhead shall be applied to the allowance for equipment ownership expense. Since costs incident to maintenance and minor and running repairs are not reflected in the ownership Schedule, separate allowance shall be made therefor. In periods of suspension of work for the convenience of the Government under an appropriate contract clause, the allowance for equipment ownership expense shall not exceed 50% of the amount computed as herein indicated. Notwithstanding any sale and leaseback, or the acquisition of construction plant and equipment by individuals, firms, corporations, or trusts, other than the contractor, and the leasing or rental of such construction plant and equipment to the contractor, the amount to be considered as a cost covering the use of such equipment shall not exceed the allowance for ownership expenses computed as indicated herein. Under certain circumstances, because of the long duration, special nature, or location of the work, it may be more economical to charge the net cost of items of construction plant and equipment directly against a contract in lieu of use of the ownership Schedule. In such cases, where the contract, record of negotiations, or attendant circumstances indicate that particular items of construction plant and equipment were purchased for use solely under a specific contract, the cost of such items, less their proper resale or salvage value, may be charged to the contract as a direct charge, together with costs of repairs, overhaul, and maintenance incident thereto.

15–402.2 *Construction Plant and Equipment Rented From Others.* Costs incurred in connection with rental of construction plant and equipment from others (not under sale and leaseback arrangements) are allowable. Under cost-reimbursement type contracts, rental arrangements are subject to approval by the contracting officer. Costs, such as maintenance and minor or running repairs incident to the operation of such rented equipment, that are not included in the rental rate are allowable. Costs incident to major repair and overhaul are not allowable.

15–402.3 *Home Office Expense.* The extent to which a contractor utilizes his home office or central office organization for the performance of general, administrative and management functions applicable to individual Government construction contracts is dependent upon the geographical location of the job site in relation to the contractor's home office, the magnitude and duration of the project and other similar factors. Under the types of construction projects awarded on a cost-reimbursement type contract basis, most general, administrative, management and other indirect cost functions are usually performed at the job site rather than at the contractor's home or central office. Other minor or incidental services otherwise provided are considered to be compensated for in the fixed fee. Accordingly, expenses incurred in the contractor's central or home office, including compensation and traveling expenses of officers and central office employees, are not allowable under cost-reimbursement type contracts except to the extent authorized by the contract or approved by the contracting officer. Under fixed-price type construction contracts which are performed at least in part through the use of the contractor's central office organization, the costs incurred by the contractor's central office are acceptable to the extent that they are allocable and reasonable in relation to the contract, and *provided* they do not exceed any limitations of cost stated in the contract or an advance understanding.

15–402.4 *Job Site Expenses.* Costs incurred at the job site incident to the performance of the work, such as the cost of superintendence, time-keeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as a direct charge.

15–402.5 *Temporary Use of Land, Structures and Facilities.*

(a) Rental and any other costs, less any applicable credits, incurred in acquiring the temporary use of land, structures and facilities are allowable.

(b) Costs, less any applicable credits, incurred in the construction or fabrication of structures and facilities of a temporary nature are allowable.

Part 5—Contracts for Industrial Facilities

15-501 Applicable Cost Principles. Except as otherwise provided in this Part, the allowability of cost will be determined in accordance with Part 2, 3, or 4 of this Section XV, as appropriate.

15-502 Factors Affecting Allowability of Costs. A contractor's established accounting system and procedures are normally directed to the equitable allocation of costs to the types of products which he produces or services which he renders in the course of his normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor's normal products or services. These operating and administrative differences affect the equitable allocation of indirect costs to facility contracts and make it desirable that advance understandings, as provided in 15-107, be agreed to between the contractor and the contracting Officer as to such indirect cost items to be applied to the facilities acquisition. A contractor's normal accounting practice for allocating indirect costs to the acquisition of his own facilities may range from charging all such costs to this acquisition to not charging any such costs thereto. Where necessary to produce an equitable result, the contractor's usual method of allocating indirect cost will be varied and appropriate adjustment will be made to the pools of indirect cost and the bases of their distribution.

15-503 Allocation of Indirect Manufacturing and Plant Operational Cost.

(a) Facilities contract operations may involve:

(i) the purchase of facilities, or services in connection therewith, on a completed basis from outside source;

(ii) the purchase of completed facilities from outside sources, installation to be accomplished by the contractor's own employees;

(iii) rehabilitation of existing facilities by the contractor's own employees; or

(iv) construction or manufacture of facilities by the contractor from purchased components.

Guidelines for the allocation of indirect costs in these particular circumstances are set forth in (b) through (d) below.

(b) The purchase of facilities, or services in connection therewith, from outside sources on a completed basis does not involve the contractor's direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(c) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities may involve the use of the contractor's plant maintenance labor, as distinguished from direct labor engaged in the production of the company's normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditure of the classes of labor utilized for the performance of the facilities work may be allocated to the facilities work. Thus, a facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(d) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items which are involved in the regular course of the contractor's business by the use of the contractor's direct labor and manufacturing processes, the indirect costs normally allocated to all such work may be allocated to the facilities contract.

15-504 Reserved. |

15-505 Contractor's Commercial Products. If facilities which constitute the contractor's usual commercial products (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor's most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.

Part 6—Reserved

Part 7—Grants and Contracts With State and Local Governments

15-701 Purpose and Scope.

15-701.1 *Objectives*. This Part sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

15-701.2 *Policy Guides*. The application of these principles is based on the fundamental premises that:

(a) State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

(b) The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

(c) Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

15-701.3 *Application*. These principles will be applied by all Federal agencies in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to Section XV, Part 3, and (b) publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Federal agencies.

15-702 Definitions.

15-702.1 *Approval or Authorization of the Grantor Federal Agency* means documentation evidencing consent prior to incurring specific cost.

15-702.2 *Cost Allocation Plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

15-702.3 *Cost*, as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

15-702.4 *Cost Objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

15-702.5 *Federal Agency* means any department, agency, commission, or instrumentality in the executive branch of the Federal Government which makes grants to or contracts with State or local governments.

15–702.6 *Grant* means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this Part as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

15–702.7 *Grant Program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

15–702.8 *Grantee* means the department or agency of State or local government which is responsible for administration of the grant.

15–702.9 *Local Unit* means any political subdivision of government below the State level.

15–702.10 *Other State or Local Agencies* means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

15–702.11 *Services*, as used herein, means goods and facilities, as well as services.

15–702.12 *Supporting Services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing services to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting, budgeting, auditing, mail and messenger service, and the like.

15–703 Basic Guidelines.

15–703.1 *Factors Affecting Allowability of Costs.* To be allowable under a grant program, costs must meet the following general criteria:

(a) Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(b) Be authorized or not prohibited under State or local laws or regulations.

(c) Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

(d) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

(e) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(f) Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

(g) Be net of all applicable credits.

15–703.2 *Allocable Costs.*

(a) A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

(b) Any cost allocable to a particular grant or cost objective under the principles provided for in this Part may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

(c) Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in 15-709.

15-703.3 *Applicable Credits.*

(a) Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

(b) Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

15-704 Composition of Cost.

15-704.1 *Total Cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

15-704.2 *Classification of Costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in paragraphs 15-705 through 15-709.

15-705 Direct Costs.

15-705.1 *General.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts, or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

15-705.2 *Application.* Typical direct costs chargeable to grant programs are:

(a) Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

(b) Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

(c) Equipment and other approved capital expenditures.

(d) Other items of expense incurred specifically to carry out the grant agreement.

(e) Services furnished specifically for the grant program by other agencies, *provided* such charges are consistent with criteria outlined in paragraph 15-707 of these principles.

15-706 Indirect Costs.

15-706.1 *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other department in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration of relative benefits derived.

15-706.2 *Grantee Departmental Indirect Costs.* All grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Part 7. In lieu of determining the actual amount of grantee departmental indirect costs allocable to a grant program, the following methods may be used:

(a) *Predetermined Fixed Rates for Indirect Costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

(b) *Negotiated Lump Sum for Overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

15-706.3 *Limitation on Indirect Costs.*

(a) Federal grants may be subject to laws that limit the amount of indirect costs that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Part 7, whichever is the smaller.

(b) When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Part 7, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

15-707 Cost Incurred by Agencies Other Than the Grantee.

15-707.1 *General.* The cost of service provided by other agencies may only include allowable direct costs of the service plus a prorata share of allowable supporting costs (15-702.12) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

15-707.2 *Alternative Methods of Determining Indirect Cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used *provided* only one method is used for a specific service during the fiscal year involved.

(a) *Standard Indirect Rate.* An amount equal to ten percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

(b) *Predetermined Fixed Rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in 15-706.2(a).

15-708 Cost Incurred by Grantee Department for Others.

15-708.1 *General.* The principles provided in 15-707 will also be used in determining the cost of services provided by the grantee department to another agency.

15-709 Cost Allocation Plan.

15-709.1 *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

15-709.2 *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational units which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

(a) The nature and extent of services provided and their relevance to the federally sponsored programs.

(b) The items of expense to be included.

(c) The methods to be used in distributing cost.

15-709.3 *Instructions for Preparation of Cost Allocation Plans.* The Department of Health, Education and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

15-709.4 *Negotiations and Approval of Indirect Cost Proposals for States.*

(a) The Department of Health, Education and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

(b) At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in (a) above for the negotiation, approval and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education and Welfare in collaboration with the other interested agencies and submitted to the General Services Administration for final approval. A current list of agency assignments will be maintained by the Department of Health, Education and Welfare.

(c) Questions concerning the cost allocation plans approved under (a) and (b) above should be directed to the agency responsible for such approvals.

15–709.5 *Negotiation and Approval of Indirect Cost Proposals for Local Governments.*

(a) Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

(b) A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education and Welfare in collaboration with the other interested agencies, and submitted to the General Services Administration for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

(c) At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

15–709.6 *Resolution of Problems.* To the extent that problems are encountered among the Federal agencies in connection with 15–709.4 and 15–709.5 above, the General Services Administration will lend assistance as required.

15–710 Standards for Selected Items of Cost. Paragraphs 15–711, 15–712, and 15–713 provide standards for determining the allowability of selected items of cost. These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in 15–701 through 15–709.

15–711 Allowable Costs.

15–711.1 *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of Government and is not allowable.

15-711.2 *Advertising*. Advertising media includes newspapers, magazines, radio and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

(a) Recruitment of personnel required for the grant program.

(b) Solicitation of bids for the procurement of goods and services required.

(c) Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

(d) Other purposes specifically provided for in the grant agreement.

15-711.3 *Advisory Councils*. Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

15-711.4 *Audit Service*. The costs of audit necessary for the administration and management of functions related to grant programs is allowable.

15-711.5 *Bonding*. Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

15-711.6 *Budgeting*. Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

15-711.7 *Building Lease Management*. The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

15-711.8 *Central Stores*. The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

15-711.9 *Communications*. Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

15-711.10 *Compensation for Personal Services*.

(a) *General*. Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (15-711.13). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered, (2) follows an appointment made in accordance with State or local Government laws and rules and which meets Federal merit system or other requirements, where applicable; and (3) is determined and supported as provided in (b) below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

(b) *Payroll and Distribution of Time.* Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

15-711.11 *Depreciation and Use Allowances.*

(a) Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

(b) The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

(c) Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

(d) In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment.

(e) No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated, *provided*, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

15–711.12 *Disbursing Service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

15–711.13 *Employee Fringe Benefits.* Costs identified under (a) and (b) below are allowable to the extent that total compensation for employees is reasonable as defined in 15–711.10.

(a) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

(b) Employee benefits in the form of employer's contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, *provided* such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

15–711.14 *Employee Morale, Health and Welfare Costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy, are allowable. Income generated from any of these activities will be offset against expenses.

15–711.15 *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

15–711.16 *Legal Expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

15–711.17 *Maintenance and Repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

15–711.18 *Materials and Supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

15–711.19 *Memberships, Subscriptions and Professional Activities.*

(a) *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable *provided:* (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cost of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

(b) *Reference Material.* The cost of books and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

(c) *Meetings and Conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

15–711.20 *Motor Pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

15–711.21 *Payroll Preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

15–711.22 *Personnel Administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs are allowable.

15–711.23 *Printing and Reproduction.* Cost for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

15–711.24 *Procurement Service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

15–711.25 *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

15–711.26 *Training and Education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs is allowable. Out-of-Service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

15–711.27 *Transportation.* Costs incurred for freight, cartage, express, postage and other transportation costs relating either to goods purchased, delivered, or moved from one location to another are allowable.

15–711.28 *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, *provided* the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class air accommodations are not reasonably available.

15-712 Costs Allowable With Approval of Grantor Agency.

15-712.1 *Automatic Data Processing*. The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only when specific prior approval of the grantor Federal agency is provided under the selected item for capital expenditures.

15-712.2 *Building Space and Related Facilities*. The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

(a) *Rental Cost*. The rental cost of space in a privately owned building is allowable.

(b) *Maintenance and Operation*. The cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

(c) *Rearrangements and Alterations*. Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value of useful life of the facilities (15-712.3) are allowable when specifically approved by the grantor agency.

(d) *Depreciation and Use Allowances on Publicly Owned Buildings*. These costs are allowable as provided in 15-711.11.

(e) *Occupancy of Space under Rental-Purchase or a Lease with Option-to-Purchase Agreement*. The cost of space procured under such arrangements is allowable when specifically approved by the Federal grantor agency.

15-712.3 *Capital Expenditures*. The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

15-712.4 *Insurance and Indemnification*.

(a) Costs of insurance required, or approved and maintained pursuant to the grant agreement, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to

the extent that the grantor agency has specifically required or approved such costs.

(c) Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

(d) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

(e) Indemnification includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in (d) above.

15–712.5 *Management Studies*. The cost of management studies to improve the effectiveness and efficiency of grant management for on-going programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

15–712.6 *Preagreement Costs*. Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

15–712.7 *Professional Services*. Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

15–712.8 *Proposal Costs*. Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

15–713 Unallowable Costs.

15–713.1 *Bad Debts*. Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

15–713.2 *Contingencies*. Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

15–713.3 *Contributions and Donations*. Unallowable.

15–713.4 *Entertainment*. Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

15–713.5 *Fines and Penalties*. Costs resulting from violations of, or failure to comply with Federal, State and local laws and regulations are unallowable.

15–713.6 *Governor's Expenses*. The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

15–713.7 *Interest and Other Financial Costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

15–713.8 *Legislative Expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

15–713.9 *Underrecovery of Costs Under Grant Agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

CONTRACT COST PRINCIPLES AND PROCEDURES

Part 8—Training and Other Services — Educational Institutions

15-801 Purpose. This Part 8 extends the scope of Part 3 to cover the determination of costs incurred by educational institutions under Federal grants and contracts for training and other educational services. (See Appendix O for Cost Accounting Standards Board Cost Accounting Standards.)

15-802 Application. All agencies of the Department of Defense will use Part 3, including this Part 8, as a basis for determining allowable costs under grants and cost reimbursement type contracts with educational institutions for work performed under federally sponsored educational service agreements.

15-803 Terminology. The following definitions are to be used in determining the indirect cost of federally sponsored training and other educational services under this Part 8.

15-803.1 *Educational Service Agreement* means any grant or contract under which Federal financing is provided on a cost reimbursement basis for all or an agreed portion of the costs incurred for training or other educational services. Typical of the work covered by educational service agreements are summer institutes, special training programs for selected participants, professional or technical services to cooperating countries, the development and introduction of new or expanded courses, and similar instructional oriented undertakings, including special research training programs, that are separately budgeted and accounted for by the institution. The term does not extend to (a) grants or contracts for organized research, (b) arrangements under which the Federal financing is exclusively in the form of scholarships, fellowships, traineeships, or other fixed amounts such as a cost of education allowance or the normal published tuition rates and fees of an institution, or (c) construction, facility, and exclusively general resource or institutional type grants.

15-803.2 *Instruction* means all of the academic work other than organized research carried on by an institution, including the teaching of graduate and undergraduate courses, departmental research (see 15-302.2) and all special training or other instructional oriented projects sponsored by the Federal Government or others under educational service agreements.

15-804 Student Administration and Services. In addition to the five major functional categories of indirect costs described in 15-306, there is established an additional category under the title "Student administration and services" to embrace the following:

15-804.1 *Expenses—Student Affairs.* The expenses in this category are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalog, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to 15-809.2. The student administration and services category also includes the staff benefits and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the cost of the operation and maintenance of the physical plant, and charges representing use allowance or depreciation applicable to the buildings and equipment utilized in the performance of the functions included in this category.

15-804.2 *Expenses—Instruction Activity.* The expenses in this category are generally applicable in their entirety to the instruction activity. They should be allocated to applicable cost objectives within the instruction activity, including educational service agreements, when such agreements reasonably benefit from these expenses. Such expenses should be allocated on the basis of population served (computed on the basis of full-time equivalents including students, faculty, and others as appropriate) or other methods which will result in an equitable distribution to cost objectives in relation to the benefits received and be consistent with guides provided in 15-305.2.

15-805 Direct Costs of Educational Service Agreements. Direct costs of work performed under educational service agreements will be determined consistent with the principles set forth in 15-304.

15-806 Indirect Costs of the Instruction Activity. The indirect costs of the instruction activity as a whole should include its allocated share of administrative and supportive costs determined in accordance with the principles set forth in 15-804 and 15-306. Such costs may include other items of indirect cost incurred solely for the instruction activity and not included in the general allocation of the various categories of indirect expenses. Costs incurred in behalf of the institution by State and local governments are allowable as provided for in 15-303.6.

15-807 Indirect Costs Applicable to Educational Service Agreements. The individual items of indirect costs applicable to the instruction activity as a whole should be assigned to (1) educational service agreements, and (2) all other instructional work through use of appropriate cost groupings, selected distribution bases, and other reasonable methods as outlined in 15-305.2. A single indirect pool may be used for all educational service agreements provided this results in a reasonably equitable distribution of costs among agreements in relation to indirect support services provided. However, when the level of indirect support significantly varies for work performed either on campus or off campus under a particular agreement or group of agreements, separate cost pools should be established consistent with the principles set forth in 15-307.1(b). Where direct charges are provided for under educational service agreements for such things as commencement fees, student fees, and tuition, the related indirect costs, through separate cost groupings, should be excluded from the indirect costs allocable to the service agreements.

15-808 Indirect Cost Rates for Educational Service Agreements. An indirect costs rate should be determined for the educational service agreement pool or pools, as established under 15-807. The rate in each case should be stated as the percentage which the amount of the particular educational service agreement pool is of the total direct salaries and wages of all educational service agreements identified with such pool. Indirect costs should be distributed to individual agreements by applying the rate or rates established to direct salaries and wages for each agreement. When a fixed rate is negotiated in advance of a fiscal year, the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation as in 15-307.4 and 15-307.5.

15–809 General Standards for Selected Items of Cost. The standards for selected items of cost as set forth in 15–309.1 through 15–309.46 applicable to research agreements will also be applied to educational service agreements with the following modifications:

15–809.1 *Commencement and Convocation Costs* (*15–309.5*). Expenses incurred for convocations and commencements apply to the instruction activity as a whole. Such expenses are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see 15–804.

15–809.2 *Compensation for Personal Services* (*15–309.7*). Charges to educational service agreements for personal services will normally be determined and supported consistent with the provisions of 15–309.7. However, the provisions for stipulated salary support will not be used for educational service agreements. Also, charges may include compensation in excess of the base salary of a faculty member for the conduct of courses outside the normal duties of such member *provided* that: (i) extra charges are determined at a rate not greater than the basic salary rate of the member; (ii) salary payments for such work follow practices consistently applied within the institution; and (iii) specific authorization for such charges is included in the educational service agreement.

15–809.3 *Scholarships and Student Aid Costs* (*15–309.35*). Expenses incurred for scholarships and student aid are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

15–809.4 *Student Activity Costs* (*15–309.40*). Expenses incurred for student activities are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

15–809.5 *Student Services Costs* (*15–309.41*). Expenses incurred for student services are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see 15–804.

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised semiannually (January 1 and July 1).

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For historical research for the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," which are published as three separate volumes. No amendments were published in the FEDERAL REGISTER during the period July 1, 1973 to July 1, 1974. For the period July 1, 1974 to July 1, 1979, see the section concerning "Primary Publication in the CFR" on page vii of the 1979 edition.

As an aid to the user, the Office of the Federal Register has prepared the following list of DAR sections, paragraphs, subparagraphs, and appendices that appear to be affected or amended by DPC or DAC circulars. (Beginning with DAC 76-20, July 1, 1980, amendments have appeared in replacement page format in the FEDERAL REGISTER.)

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